

An Annualrenter cannot remove Tenants.

1630. *March 9.*AULD, Butter-man in Edinburgh, *against* YULE and THOMAS AULD.

No 8.

An annualrent cannot remove tenants; nor does the infestment bar the heritor from setting new tacks.

AULD being infest by the heritor, with consent of his wife, conjunct-fiar in an annualrent out of their lands; after which the husband, who was heritor of the lands, dies, and the relict, who was liferenter, and who consented to the infestment of an annualrent after her husband's decease, setting a tack of that land, after which tack the annualrenter comprises from her, and from the heir of the heritor, the whole right of the land, for diverse years owing of the annualrent; and upon the comprising, being infest, pursues removing against the relict, and the tackfman; wherein the LORDS found, That the comprising, during the tack, could not remove the tackfman, the tack being set before the denunciation of the comprising, albeit after that the setter had consented to the right of the annualrenter; for the LORDS found the tack, albeit posterior to the annualrent, yet before the comprising, was not good to stay pointing of the ground for the annualrent, but was sufficient to stay removing upon the comprising; and it was not respected, what the comprising *answered*, That the comprising ought to be drawn back to his own cause, viz. The time of the infestment of the annualrent, after which time he alleged, nothing could be done by the granters thereof, that might derogate to the effect thereof; which was repelled: Neither was it respected what he *replied*, That the ground might become unanswerable to pay the annualrent, and so the house becoming ruinous, he might effectually comprise the property therefor, wherein, as the author of the annualrent could not impede the removing, no more could the tackfman *qui habet causam ab eo*; which was also repelled. (See Scarlet against Paterfon, Durie, p. 496. [at the end of that Decision,] *voce* INDEFINITE INTROMISSON.)

Clerk, *Gibson.**Fol. Dic. v. 1. p. 46. Durie, p. 503.*

In what manner an Annualrent-Right may be Extinguished.

1627. *November 23.* DUMBAR *against* WILLIAMSON.

No 9.

A renunciation, found not sufficient to extinguish an annualrent right, established by charter and sasine, in prejudice of a

IN an action of pointing of the ground betwixt Dumbar and Williamson, wherein personal execution was concluded against the granter of the infestment of the annualrent, for the which action was intended, as well as real against the ground:—THE LORDS sustained action against the granter of the infestment for payment, *personali actione*, as was desired, as well as for the real, by pointing of the ground; notwithstanding that the pursuer was infest only in the said annual-