

this wadset should be declared satisfied *pro tanto*. It was *answered*, *imo*, *Contra singularem successorem*, a personal debt by way of retention or compensation, cannot take away a real infestment; which, without a valid renunciation or discharge, cannot so deaude the party infest, as that a singular successor may not acquire the right thereof. *Ido*, This ground of compensation is not liquid nor constant, seeing it depends upon an action of warrandice against Lugton's heirs.

THE LORDS repelled the allegiance, in respect of the first answer chiefly.

Fol. Dic. v. 1. p. 164. Gilmour, No 33. p. 25.

No 89.

1666. December. WILLIAM OLIPHANT *against* HAMILTON.

OLIPHANT pursuing a pointing of the ground upon an annualrent, it was *alleged* absolutor from the bygones before the pursuer's right, because his author was debtor to the defender in a liquid sum equivalent. It was *answered*, That the pursuer was singular successor, and no personal debt of his authors could infer compensation of a real right against him.

THE LORDS found, that the bygone annualrents were moveable and compensable with any liquid debt of the pursuer's authors.

Fol. Dic. v. 1. p. 164. Stair, v. 1. p. 423.

No 90.
The bygones of an infestment of annualrent are moveable, and therefore compensable by any liquid debt of the annualrenter, even against a singular successor in the annualrent right.

1675. June 18. LEYES *against* FORBES.

COMPENSATION may be proponed upon sums whereupon apprising is led: because apprising is but an accessory security, a *pignus*, and does not absorb the debt.

Fol. Dic. v. 1. p. 164.

No 91.

* * * See The particulars, No 6. p. 286.

1675. November 12. HOME *against* HOME.

HOME of Plendergaist pursues Home of Linthill, as representing his father, for payment of a debt of his, which was assigned to Patrick Andrew; the pursuit was founded upon a ticket by Linthill's father, bearing, That he had received a bond of L. 1,200, payable to him for the behoof of John Home, within five weeks after the date; and having a cautioner, Linthill cannot produce the bond. The question is, Whether he should be liable for annualrent on this ground, that it was to be presumed, that the bond of L. 1,200 having a cautioner, did bear annualrent, which then was ordinarily insert in bonds.

No 92.
Compensation was not sustained upon a wadset, which contained a clause of requisition; because, until requisition, there was no debt.

No 92.

THE LORDS found that the presumption was not sufficient to infer annualrent, seeing the term of payment was within five weeks.

All the parties and witnesses were dead, and Linthill was examined; whether he knew that the bond bore annualrent, which he denied. There was also compensation proponed upon an apprising led against Colonel Home, to which Linthill was assignee; and upon a wadset.

THE LORDS sustained the compensation upon the apprising for the principal sum and annualrent; but in respect the ground of it was one of the bonds given by the friends of the Earl of Home, for purchasing a right of teinds, whereof Linthill was one, and got the disposition in his name; therefore the LORDS allowed no further Sheriff-fee nor penalty than Linthill should depone he gave out. They did also refuse to sustain compensation upon the wadset, if it contained a clause of requisition, unless requisition were made, as not being liquid.

Fol. Dic. v. 1. p. 164. Stair, v. 2. p. 368.

1676. June 22.

— against SHEIL.

No 93.

A comprising was deduced at the instance of an assignee, against the representatives of a debtor. Pleaded, the cedent was debtor to the defunct. Objected, compensation is only of personal rights, and not receivable in cases of real right. Not decided.

A comprising being deduced at the instance of an assignee, against the representative of the debtor as lawfully charged; and the comprising upon his infertment having intended a pursuit for mails and duties;

It was *alleged*, That the cedent was debtor to the defunct, so that the debt due to the defunct, did compensate the debt due by him; and the ground of the comprising being satisfied, the comprising is extinguished: Which case being reported to the Lords, they had these points in debate and consideration amongst themselves; viz. *imo*, That compensation is only of personal debts, and of sums of money, *de liquido in liquidum*; but is not receivable in the case of real rights and lands, and pursuits upon the same; seeing in such processes there is no debt craved, but the pursuit is founded upon a real right: And some of the LORDS being inclined to think, that the allegiance is not founded upon compensation, but upon payment or the equivalent, viz. That the cedent *habebat intus*; and in effect, and upon the matter was satisfied, being debtor in as much as was due to him by the defunct; and the LORDS are in use to favour debtors whose lands are comprised; and, in order to extinguish comprising, to sustain process for count and reckoning; and declaring the same to be extinct, not only by intromission but by compensation; others were of the opinion, that though compensation *ipso jure minuit et tollit obligationem*, where it is proponed; yet if the same be not proponed before the decret, whereupon the comprising proceeds, and when both debts are *in finibus* of a personal obligation, the debt contained in the comprising cannot be said to have been paid before the comprising, and after the comprising is deduced it cannot be extinguished but either by intromission within the years of the legal, or by redemption. *2do*,