

No 10.

trate; and found it effectual against a singular successor; and sustained the other discharges, in so far as they extended to annualrents then resting.—It was further *alleged* for McLellan, That he had used inhibition against his author, before he granted this renunciation, whereupon he hath raised reduction of the said renunciation.—It was *answered*, That inhibition impedes the person inhibit to alienate any real right, but doth not impede those persons inhibit to pay him, and take from him either discharge or renunciation, as was found in the case of Mr John Ellies and Wishart*, and several times since.

THE LORDS found the inhibition did not reach the renunciation or discharge, granted by the person inhibit, upon true payment, seeing the debtor of the person inhibit could not be hindered by inhibition, to pay and liberate himself. (*See* INHIBITION.)

Fol. Dic. v. 1. p. 46. Stair, v. 2. p. 732.

1680. July 8.

RANKIN *against* ARNOT.

No 11.
In an infestment of annualrent, constituted after the new form, as an accessory security, to the principal personal obligation, payment of the principal sum, obtained by pointing of the ground, was found effectual, against a singular successor, in the annualrent, without renunciation.

RANKIN of Pottie having obtained right to an heritable bond, and infestment thereon, and having pursued a pointing of the ground against Arnot of Capledrea, the defender *alleged* absolvitor, because he had made payment to the pursuer's author, before he was denuded, not only of the bygone annualrents, but of all, or a part of the principal sum, or at least the same was satisfied by his author's having pointed, not only for the annualrents, but for the principal sum; likeas he had compensation against his author, prior to his right, which he now produces.—The pursuer *answered, non relevat*, That the defender had made payment to the pursuer's author, unless he had obtained from him a renunciation of the annualrent, and the same had been duly registered, conform to the act of Parliament 1617, without which, no payment made, or satisfaction obtained, by legal execution, much less compensation, is relevant against a singular successor, acquiring a real right of an annualrent by an infestment; and finding nothing in the registers to evacuate the annualrent, he was *in tuto* to purchase the same.—The defender *replied*, That the act of Parliament anent registration is only made for securing purchasers of land, and hath no mention of annualrents, and cannot be extended thereto, being a statute *stricti juris*, as it could not be extended to renunciations *ad remanentiam*, until the late act of Parliament, extending the same; and albeit it could be extended to annualrents principally disposed, but under reversion, and with a clause of requisition, yet it cannot be extended to this case, where the bond is principally personal for payment of a sum, and there is only an infestment of an annualrent in security; so that the personal obligation may certainly be extinguished by payment, either voluntarily, or by legal execution, or by compensation; and therefore the infestment and security being but accessory, falls in consequence, and requires no renunciation: **And** there is no parallel with such annualrents and purchase of lands; see

* Examine General List of Names.

ing the purchaser of annualrents cannot but know that it is a security for money, and may inform himself by the debtor, whether it be resting, or otherwise left upon his author's warrantice; and seldom are such annualrents purchased, but either of necessity, or for some advantage.—It was *duplied* for the pursuer, That every right must be dissolved as it was constituted; therefore, as the annualrent required a saine regiftrate to its constitution, so it must have a renunciation regiftrate to its destitution; and therefore it hath always been the common opinion, that infestments of annualrent must be so evacuate; and where lands is mentioned, *omne jus reale* is understood, otherwise the statute would not reach to secure proper wadsfets.—The defender *triplied*, That the brocard alleged hath many exceptions; as *imo*, Infestments upon apprisings are extinct without renunciations, not only by intromission by the statute 1621 anent apprisings, but also by payment by the debtor and his discharge, which is effectual against appriser's singular successors, and likewise infestments for relief; yea the infestments which now are very ordinary for security of sums, whereby the purchaser is to enjoy the profits to be imputed in his annualrents, and then in his principal sum. In all these cases, payment by intromission, or otherwise, are relevant against singular successors, without any renunciation, and therefore ought to be so in heritable bonds. *2do*, Many heritable bonds admit of summary execution, without requisition; and before the late act of Parliament, poiding might proceed thereupon, without abiding the days in the charge; and if this were not sufficient against singular successors, no man could be secure from double payment. In like manner, such bonds become moveable by a charge or requisition, which looses the infestment, and makes the sums moveable, arrestable, escheatable, and testable; and generally, creditors think themselves secured when they pay heritable bonds, and oft times do not know whether infestment be taken thereupon or not.

THE LORDS found, That satisfaction of annualrents by infestments, in security of personal obligements, obtained by poiding, or other legal diligence, were thereby extinct, without necessity of renunciations, and that against singular successors; and likewise they admitted compensation, upon debts due by the cedent before infestment was taken, when the bond was merely personal; and that all exceptions against the bygone annualrents, by payment or compensation, was relevant against singular successors: But found, That the poiding used in this case was unwarrantable; so had not occasion to determine whether renunciations regiftrate, in case of voluntary payment of sums, whereupon infestments of annualrent followed, wherein the debtor might easily secure himself, by refusing payment without renunciation, was in that case requisite. (*See COMPENSATION.—RETENTION.*)

Fol. Dic. v. 1. p. 46. Stair, v. 2. p. 782.