

No 88.
 tion, the same
 was decerned
 to be deliver-
 ed up to an
 appriser of
 the wadset
 lands, and
 was found not
 compensated
 by a separate
 liquid claim,
 owing by the
 wadsetter to
 the reverser ;
 and that, be-
 cause no com-
 pensation can
 be betwixt an
 heritable right
 and a move-
 able sum.

and by virtue thereof compearing, and desiring that the consigned money, whereupon the lands wadset were redeemable, might be delivered to him ; and the Earl *alleging*, That he ought to have right thereto, in respect that Young the wadsetter, before Ker's comprising, was decerned to pay to the Earl certain sums of money, wherein he was his debtor, so that he might compensate therewith, and might therefore take up the money consigned for the redemption ; and the compriser *answering*, That seeing the comprising gave him right to the wadset, the money whereupon the land was redeemed behoved to pertain to him, and the pursuer could not compensate therewith, for that debt owing to him, the compriser having comprised an heritable right, for eliding whereof, nothing could be obtruded of any moveable debts owing to the redeemer. The LORDS found, that the compriser had the only right to the sum, whereupon reversion was granted, and not the redeemer ; for albeit the wadsetter was owing a moveable sum to the redeemer, before the wadsetter's right was comprised, yet seeing the compriser had comprised that right at that same time when the wadset stood, and before any order of redemption used ; and seeing the redeemer had done nothing before the comprising, nor yet since the redemption, nor consignation (whereby it might be supposed that the sum became moveable), to make that sum consigned liable, or to affect the same to him for his debt ; therefore it was found, that the compriser had right to the sum, the same becoming in the place of the right of wadset comprised, and which was redeemed by the said sum, which being consigned by the redeemer, in the depositar's hands, could not be claimed by the redeemer, to be compensated with, and to be taken up by him and retained ; for then there could not be a redemption used by him ; so that he was found not to have right thereto, and that the redeemer could not compensate the sum consigned for redemption, with a debt owing to him by the wadsetter, against the said compriser, who was a singular successor, albeit it had been granted that he might have compensated against the wadsetter's self, if he had not been denuded of his right. See No 55. p. 2204.

Act. Nicolson.

Alt. Cheap.

Clerk, Scott.

Fol. Dic. v. 1. p. 164. Durie, p. 441.

1662. February.

LORD WHITEKIRK against EDNEM.

No 89.
 Found that an
 infestment
 cannot be
 compensated
 with a per-
 sonal debt.

THE Lord Whitekirk, as having right from the deceased Laird of Lugtoun to a wadset upon Ednem, containing a reversion and back-tack ; it was *excepted* by Ednem, That Lugtoun, the cedent, was satisfied of a part of the sums, in so far as he did assign a bond made to him by the deceased Lady Ednem, in favours of one Trotter, with warrandice from his own deed ; and notwithstanding of the assignation and warrandice, Lugtoun had discharged the old Lady Ednem of a part of the sums, which they instantly verified, and that therefore

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.