

sums, the same are innovated, and cease to be annualrent : so that they cannot be comprised for, as bygones, or arrears of the first annualrent ; being become a principal sum, bearing annualrent, and for which annualrent has been actually paid ; and, consequently, the property cannot be comprised for the same, as bygone annualrents drawn back to the first right.

To which it was REPLIED, That the same stands relevant ; and the allegiance ought to be repelled :—*1st.* By Act of Debtor and Creditor, the bygone annualrents, resting unpaid at Whitsunday 1667, are appointed to become, and made, a principal sum ; and, in case of not-payment of the said bygones at the terms mentioned in the foresaid act, annualrent is appointed to be due and payable for the same, in the same manner as if a security had been granted : And, consequently, whether the said bond had been taken or not, annualrent, by the Act of Parliament, had been due for the bygones ; and the nature of the said bygones would not have been innovated ; nor could the same prejudice the creditor to use real execution, by comprising for the said bygones. *2d.* The taking of the said bond did nowise innovate nor alter the nature of the said ——— ; because, the time of the taking of the said bond, there was no discharge given for the bygones ; but only, count and reckoning being made, so much acknowledged to be resting of the bygones, and bond granted for the same only in corroboration and for farther security, but prejudice of the former infestments and contracts ; and which bond cannot hinder him to comprise for the same, and for the arrears of the first annualrent run or since. And he cannot be hindered to quit or renounce the said security, which is only corroborative : nor can the lady allege any prejudice by his said diligence of comprising, which is usual and legal : nor can she be said to oppose the same, upon pretence of her right ; being a party disponer and consentor to the first right of annualrent, and who has subscribed the contract.

The Lords repelled the allegiance proponed for the Countess ; and decerned for the principal sum contained in the bond ; but assoilyied from the bygone annualrents thereof.

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1667. *February 15.* LAURENCE SCOTT *against* The HEIRS of BOSWELL of ACHFLECK.

IN the action pursued at Laurence Scott's instance, mentioned 22d November 1665, against the heirs-of-line of Boswell of Achfleck, the Lords found it sufficient to the heirs-of-line to renounce ; and that their receiving of an inconsiderable sum of money from the heir of tailie could not make them successors *titulo lucrativo* to their father, they always having done no deed whereby the creditors might be prejudged of the payment of their debt out of the estate standing in the person of the heir of tailie.

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