

rent, not by him who was conveyed personally for payment, but by one Williamson her husband, who was infest therein by the defender.—THE LORDS found this personal action also competent to the successor, who was infest by him, who first acquired right from the heritor of the land, now defender, as it would have been competent to the said first acquirer himself, against him, which was so found, albeit the said pursuer, singular successor to the said first acquirer, as said is, was not made assignee to the personal contract, concerning the alienation of the said annualrent, made betwixt the heritor and the annualrenter; but that the pursuer was only infest therein by the said first annualrenter.—In this process the LORDS also found, upon the 11th of December 1627, That the renunciation made by the husband, who was first infest before this sasine given to his wife, now pursuer, made in favours of the defender, disponent of the annualrent, was not *habilis modus*, to denude the husband, and to prejudge this right, thereafter acquired by the wife, except it had been resigned or disposed by charter and sasine, seeing it was first established by sasine: And also found, That the pursuer might lawfully pursue personal action against the said first disponent, as well as real against the ground, notwithstanding the said renunciation, made before the pursuer's right.—For which See 27th July 1626, L. Anstruther against Black, Durie, p. 230. *voce* ASSIGNATION. (See IMPLIED CONDITION.)

Aa. ———.

Alt. Cunningham.

Clerk, Gibson.

Fol. Dic. v. I. p. 46. Durie, p. 315.

1680. January 7. M'LELLAN against MUSHET.

JOHN M'LELLAN having adjudged an annualrent, by infestment upon a bond, and Adam Mushet having assignation to a part of the same sum, the debtor raised double pouding against them both, and *alleged* liberation from a part of the sum, for which he produces a renunciation from the creditor, before either of these competitors rights, and likewise two discharges of parts of the sum.—It was *answered* for M'LeLLan, That he being infest in a real right, his author's renunciation is not relevant against him, a singular successor, unless it had contained a procuratory of resignation, and that an instrument of resignation *ad remanentiam* had been taken thereupon: For, as a disposition or charter, without a sasine, cannot constitute an annualrent, so neither can a personal renunciation or discharge evacuate the same, without an instrument of resignation *ad remanentiam*, the annualrent being holden of the debtor.—It was *replied*, That the act of Parliament anent registration of sasines and reversions, doth not only sustain resignations, but also renunciations of wadsets, when duly registrate; and accordingly, this renunciation is marked registrate in the said register; and as to the other discharges there can be no controversy, but they are valid as to annualrents bygone resting the time of these discharges.—THE LORDS sustained the renunciation, being duly regis-

No 9.

singular successor, thereafter acquiring right from the annualrenter.

No 10.

A registered renunciation, without necessity of resignation, extinguishes an infestment of annualrent, *quoad omnes effectus*, even against a singular successor.

A discharge of annualrent is effectual against a singular successor, in the infestment of annualrent, acquired by apprising.

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 poiding 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 poiding 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 poided, 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 registrate, 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; fee-

* Examine General List of Names.