

from infeftments of annualrent, yet are equally burdens on the fee of him who grants them; Lord Stair, b. 4. t. 35. § 24. *2do*, That the sasine contained at full length the obligation to infeft, and the obligation being to grant infeftment for security of annualrents, the sasine must be interpreted in a congruity with it. It is true, that she was only infeft for her liferent-use, yet that was not the liferent-use of the subject, but of the sum secured upon it by infeftment; for she could have touched no more than to the extent of the annualrent, whatever had been the value of that subject. And, *lastly*, That the meaning was the same, as if she had been infeft *per expressum* in an annualrent, though in different words; and though all the conditions in the contract had not been narrated, yet the infeftment bearing to be given conform to the tenor thereof, singular successors were bound, before they could purchase *bona fide*, to look into the conditions of the contract.

THE LORDS found, that the inlacks of the jointure were a real burden, and that the adjudication was to be drawn back to the date of the infeftment.

Reporter, *Lord Royston.* For the Colonel, *Cha. Erskine.* Act. *Alex. Hay.*  
Clerk, *Machensis.*

*Fol. Dic. v. 4. p. 63. Edgar, p. 99.*

1762. February 3. COLLEGE OF ST. ANDREWS *against* CREDITORS of NEWARK.

IN the year 1477, John Kinloch of Cruivie, granted to the friars predicators of St Monance a perpetual annuity of L. 20, to be levied out of his lands of Invery, part of the estate of Newark. A sale of this estate being brought before the Court of Session, upon the bankruptcy of the proprietor, appearance was made for the College of St Andrews, who had right by progress to this perpetual annuity; and craved to have it declared as a condition in the articles of roup, that the estate should be burdened with payment of the said annuity. The Court had no hesitation to grant the prayer of this petition, even against a purchaser of the said lands of Invery, though the annuity was a rent-charge only, and never clothed with infeftment. The reason was, that rent-charges were customary in Scotland before infeftments of annualrent were introduced; and they were real rights even without infeftment, so as to be effectual against all singular successors. What is curious in this case, is to find rent-charges subsisting in Scotland even to this day. And it is remarkable, that here is a real right upon land against which the records afford no security to a purchaser.

No 13.  
Rent-charge.

*Sel. Dec. No 186. p. 251.*