

No 3.

1618. July 29.

A. against B.

A PARTY being obliged to infest, holden of the King, and not being expressed *cujus expensis*, the LORDS found that it ought to be upon their equal expenses. See APPENDIX.

*Fol. Dic. v. 1. p. 440. Kerse, MS.*

No 4.

A party being bound to infest a lady in an annualrent, was pursued not to infest, but *personali actione*, for the amount of the annualrent. This action was sustained, as it was found, that being obliged to infest, he was bound *hoc ipso* to make payment.

1622. January 17.

HAMILTON against SINCLAIR.

SIR GEORGE HAMILTON pursues the Lord Sinclair as heir to his father, who by contract obliged himself to infest the Lady Sinclair, from whom Sir George had his right, (whereupon that pursuit was moved) in a certain annualrent out of his lands, to make payment of that annualrent, *personali actione*; whereto the defender *alleging*, That the party contractor was not obliged thereto, but only to give infestment, which she ought first to crave, and if she were therein distressed, so that the infestment could not be profitable to her, then she might seek personal execution as accords; but she first ought to seek the implement of the contract according to the tenor thereof.—THE LORDS found, That the party being obliged to give infestment, he was obliged, *hoc ipso*, to make payment of that whereof he was obliged to give infestment, and therefore sustained the personal action for payment.

Act. ———.

Alt. *Aiton & Nairn.*Clerk, *Hay.*

*Fol. Dic. v. 1. p. 440. Durie, p. 9.*

No 5.

A party bound to renounce an infestment held under reversion, is obliged also, upon consignation, to resign in the hands of the superior. See No 9. p. 6543.

1628. February 9.

SIMPSON against BOSWELL.

IN a suspension betwixt Boswell and Simpson, suspending charges given by Boswell to him for renouncing and resigning of lands, wherein Simpson was infest by the L. Balgony, under reversion, the right whereof was disposed to, or comprised by Boswell; and who having, after consignation of the sum, charged Simpson, not only to renounce, but to resign also the lands in the superior's hands, in favour of him who had redeemed; and which Simpson *alleged* he was not holden to do, and that he was not in law obliged to resign in his favour; but only obliged to renounce, and to grant the lands lawfully redeemed.—THE LORDS found, That he ought also to resign all his right in this redeemer's favour, to the effect that he might be infest upon his right of resignation made by him in the superior's hands, in his favours, besides the renunciation.

Act. *Aiton.*

Alt. ———.

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 440. Durie, p. 343.*