

## An Annualrenter cannot remove Tenants.

1630. *March 9.*AULD, Butter-man in Edinburgh, *against* YULE and THOMAS AULD.

## No 8.

An annualrent cannot remove tenants; nor does the infestment bar the heritor from setting new tacks.

AULD being infest by the heritor, with consent of his wife, conjunct-fiar in an annualrent out of their lands; after which the husband, who was heritor of the lands, dies, and the relict, who was liferenter, and who consented to the infestment of an annualrent after her husband's decease, setting a tack of that land, after which tack the annualrenter comprises from her, and from the heir of the heritor, the whole right of the land, for diverse years owing of the annualrent; and upon the comprising, being infest, pursues removing against the relict, and the tackfman; wherein the LORDS found, That the comprising, during the tack, could not remove the tackfman, the tack being set before the denunciation of the comprising, albeit after that the setter had consented to the right of the annualrenter; for the LORDS found the tack, albeit posterior to the annualrent, yet before the comprising, was not good to stay pointing of the ground for the annualrent, but was sufficient to stay removing upon the comprising; and it was not respected, what the comprising *answered*, That the comprising ought to be drawn back to his own cause, viz. The time of the infestment of the annualrent, after which time he alleged, nothing could be done by the granters thereof, that might derogate to the effect thereof; which was repelled: Neither was it respected what he *replied*, That the ground might become unanswerable to pay the annualrent, and so the house becoming ruinous, he might effectually comprise the property therefor, wherein, as the author of the annualrent could not impede the removing, no more could the tackfman *qui habet causam ab eo*; which was also repelled. (See Scarlet against Paterfon, Durie, p. 496. [at the end of that Decision,] *voce* INDEFINITE INTROMISSON.)

Clerk, *Gibson.**Fol. Dic. v. I. p. 46. Durie, p. 503.*

## In what manner an Annualrent-Right may be Extinguished.

1627. *November 23.* DUMBAR *against* WILLIAMSON.

## No 9.

A renunciation, found not sufficient to extinguish an annualrent right, established by charter and sasine, in prejudice of a

IN an action of pointing of the ground betwixt Dumbar and Williamson, wherein personal execution was concluded against the granter of the infestment of the annualrent, for the which action was intended, as well as real against the ground:—THE LORDS sustained action against the granter of the infestment for payment, *personali actione*, as was desired, as well as for the real, by pointing of the ground; notwithstanding that the pursuer was infest only in the said annual-

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 prejudice 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. Anfruther against Black, Durie, p. 230. *voce* ASSIGNATION. (See IMPLIED CONDITION.)

Act. ———.

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-

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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.