

tinguishing *concursum debiti et crediti*, which could not happen by his getting the money after John's decease, which nothing but a legally established title could effect.

THE LORDS found, That Mr Robert Stuart had no right of retention for his own payment; and that the Creditors of John Stuart ought to be preferred to his share of the deposited money, according to the diligence used by them to affect the same.

Fol. Dic. v. 1. p. 164. Forbes, p. 348.

No 85.

S E C T. XIII.

Real and Personal Rights, Whether Mutually Compensable.

1611. *March 23.*BUCHAN *against* SEATON.

IN an action betwixt Christian Buchan and Marion Seaton, anent the violent profits within burgh, THE LORDS admitted an exception of compensation against the wife for an annualrent, disposed furth of the same land by her and her umquihil husband.

The like betwixt William Napier and M'Murray.

Kerse, MS. Fol. 245.

No 86.

No 87.

A liquid sum for a house mail cannot be suspended upon compensation, founded upon the tenant's right of retention of any annualrent wherein he is infest furth of the tenement, he having no decree for pointing the ground, nor personal liquid decree against the heritor or liferenter.

1611. *June 4.*AGNES HAMILTON *against* WILLIAM M'CARTENEY.

A liquidated decret for a house-mail cannot be suspended by compensation founded upon the tenant's right of retention of an annualrent, wherein he is infest furth of the tenement; he having no decret for pointing of the ground, nor personal liquid decret against the heritor or liferenter.

Fol. Dic. v. 1. p. 165. Haddington, MS. No 2192.

1629. *March 25.*E. BUCCLEUGH *against* YOUNG and KER.

THE Earl of Buccleugh pursuing redemption against Young, who had a redeemable wadset of him, mentioned, *voce* REDEMPTION; and in this redemption, one Ker, who was creditor to Young the wadsetter, had, for sums owing to him by the said Young, comprised the said Young's right of wadset and infestment, and who upon that comprising, had charged the Earl to enter him,

No 88.
A reverser having consigned the wadset sum upon an order of redemp-

No 88.
 tion, the same was decerned to be delivered up to an appriser of the wadset lands, and was found not compensated by a separate liquid claim, owing by the wadsetter to the reverser; and that, because no compensation can be betwixt an heritable right and a moveable sum.

and by virtue thereof compearing, and desiring that the consigned money, whereupon the lands wadset were redeemable, might be delivered to him; and the Earl *alleging*, That he ought to have right thereto, in respect that Young the wadsetter, before Ker's comprising, was decerned to pay to the Earl certain sums of money, wherein he was his debtor, so that he might compensate therewith, and might therefore take up the money consigned for the redemption; and the compriser *answering*, That seeing the comprising gave him right to the wadset, the money whereupon the land was redeemed behoved to pertain to him, and the pursuer could not compensate therewith, for that debt owing to him, the compriser having comprised an heritable right, for eliding whereof, nothing could be obtruded of any moveable debts owing to the redeemer. The LORDS found, that the compriser had the only right to the sum, whereupon reversion was granted, and not the redeemer; for albeit the wadsetter was owing a moveable sum to the redeemer, before the wadsetter's right was comprised, yet seeing the compriser had comprised that right at that same time when the wadset stood, and before any order of redemption used; and seeing the redeemer had done nothing before the comprising, nor yet since the redemption, nor consignation (whereby it might be supposed that the sum became moveable), to make that sum consigned liable, or to affect the same to him for his debt; therefore it was found, that the compriser had right to the sum, the same becoming in the place of the right of wadset comprised, and which was redeemed by the said sum, which being consigned by the redeemer, in the depositar's hands, could not be claimed by the redeemer, to be compensated with, and to be taken up by him and retained; for then there could not be a redemption used by him; so that he was found not to have right thereto, and that the redeemer could not compensate the sum consigned for redemption, with a debt owing to him by the wadsetter, against the said compriser, who was a singular successor, albeit it had been granted that he might have compensated against the wadsetter's self, if he had not been denuded of his right. See No 55. p. 2204.

Act. Nicolson.

Alt. Cheap.

Clerk, Scott.

Fol. Dic. v. 1. p. 164. Durie, p. 441.

1662. February.

LORD WHITEKIRK against EDNEM.

No 89.
 Found that an infestment cannot be compensated with a personal debt.

THE Lord Whitekirk, as having right from the deceased Laird of Lugtoun to a wadset upon Ednem, containing a reversion and back-tack; it was *excepted* by Ednem, That Lugtoun, the cedent, was satisfied of a part of the sums, in so far as he did assign a bond made to him by the deceased Lady Ednem, in favours of one Trotter, with warrandice from his own deed; and notwithstanding of the assignation and warrandice, Lugtoun had discharged the old Lady Ednem of a part of the sums, which they instantly verified, and that therefore