

suspended ; and reduction raised at the instance of Sir George Preston, upon this reason, That he stood infeft in the foresaid lands upon an expired comprising ; whereas the charger's right was only a base infeftment of annualrent, never clad with possession, until the suspender was publicly infeft upon his comprising :—

It was ANSWERED for the charger, That the reason was no ways relevant ; because his infeftment of annualrent was prior to the suspender's comprising ; and, albeit it was base, yet the suspender had homologated the same, in so far as, since the expiring of this comprising, he had made payment of the annualrent, and had received discharges from the charger.

It was REPLIED, That the payment of annualrent could not infer any obligation upon the charger's right ; because the compriser, being a stranger, not knowing the validity of the annualrenter's right, might pay the annualrent for some years ; as to which payments it might prejudice him, but could not hinder him thereafter to quarrel his right by reduction or suspension ; as in the case of a superior who receives payment of the feu-duty, notwithstanding whereof he may quarrel the vassal's right upon any nullity, or by way of improbation, the feu-duties being to be paid by one who was not entered by the superior himself.

The Lords did find, That payment of the annualrent by the compriser, who was a stranger, and had not granted that infeftment of annualrent, was no homologation of his right ; and therefore did suspend the letters, and reduce ; unless they would offer to prove, by the compriser's oath, that it was *specialiter actum*, and the annualrenter's right made known when he received payment of the annualrent.

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1674. November 12. MR JOHN SEMPLE *against* JEAN SEMPLE and her HUSBAND.

In an action pursued at the said Mr John's instance, as assignee to a bond granted to John Semple of Balgounie by Semple of Noblestoun, as cautioner for Semple of Stanifleet, who was principal in the bond against the relict and executor of the said cautioner :—it was ALLEGED, That the pursuer could have no right as assignee ; because, long before any intimation of his right, his cedent, by a missive-letter written to the principal in the bond, had written, that the particulars betwixt him and Stanifleet were equal ; and that he was willing to discharge him, he getting a discharge from him.

It was REPLIED, That the said missive-letter, being written by John Semple, who was a writer to the signet, could only be applied to accounts for writing, he being Stanifleet's ordinary ; but could not be interpreted to take away a bond of borrowed money ; especially the said offer never being accepted of, nor mutual discharges thereupon granted.

The Lords did sustain the defence, founded upon the missive-letter, to take away the bond, notwithstanding of the reply ; upon these special reasons, That it was an old bond for an inconsiderable sum, whereupon Balgounie had never distressed the principal nor cautioner ; nor had left it amongst the inventory of his debts : but they did declare, that the defender should procure a discharge to Balgounie's executors from Stanifleet, or warrant them against Stanifleet's representatives.

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