

No 128.

sustained against the charger upon the said tack-duty, in respect Hugh Muir was not heritor of the lands set, but only factor, and the constituent could uplift and discharge the tack-duty, albeit payable by the tack to his factor.

*Forbes, p. 567.*

1733. December 19.

ANNUITANTS OF YORK BUILDINGS COMPANY *against* BUCHAN.

No 129.

Found that a tenant, a creditor of his master, could not retain by-gone rents, still *in medio*, in prejudice of a prior infetment of annualrent.

IN a process of mails and duties, at the instance of an annualrenter against the tacksman, the defence, as to the rents falling due before citation, was compensation by an equivalent sum that his master owed him by bond. It was agreed that the tacksman would have been safe had he paid up these rents before citation; and from thence it was *argued* for him, that compensation operates *retro*, which brings the case to the same with actual payment. It was *answered*, That compensation operates not till it be proponed; and, though it might have been proponed against the master, it cannot now be proponed against the annualrenter, after citation in the process of mails and duties; the annualrenter having a real right in the ground, as much as a singular successor in the property.—THE LORDS found, compensation cannot be sustained against a prior infetment for bygone rents, the same being *in medio*. See APPENDIX.

*Fol. Dic. v. 1. p. 166.*

1752. July 30.

JOHN LESLY of Lumquhat *against* WILLIAM HUNTER, Bleacher at Leven.

No 130.

A piece of cloth sent by a weaver to a bleachfield with his name and mark upon it, being the property of a third party, found retainable only for the price of bleaching that piece, and not for the whole cloth sent by the weaver, the proprietor proving that the cloth belonged to him and not to the weaver.

GEORGE and ARCHIBALD ARNOTS, weavers, in spring 1749, sent a parcel of cloth to William Hunter to be whitened; and, when this parcel was whitened, they brought a second parcel of cloth to be whitened also, marked with their names and usual marks; and they promised to pay the prices for whitening both parcels when they got away the second. Upon the faith of this, William Hunter delivered to them the first parcel. Soon after this the Arnots failed in their circumstances, and left the country. John Lesly of Lumquhat claimed two pieces of the second parcel of cloth; and as Hunter refused to deliver them unless he received payment for bleaching both parcels, Mr Lesly brought a process against him before the Justices of Peace for delivery; and, having proved the property of the said two pieces, the Justices 'decerned the defender to deliver to the pursuer the two pieces of cloth, on payment of the price of bleaching the same.'

William Hunter suspended, and *insisted*, That, as the said two pieces were delivered to him as the property of the Arnots, and marked with their name,