

## S E C T. XIII.

## Betwixt Singular Successors, where the Common Author is not Infert.

1676. June 20.

BROWN against SMITH.

No 76.

An assignation to an incomplete real right, though directly done and intimated, has no effect against another singular successor completing his right by infertment.

ANDREW SUTOR having disposed the equal half of the east side of Letsie to Ronald Brown, with power of resignation; the said Ronald grants an infertment of annualrent to James Brown, and thereafter disposes the land irredeemably to David Smith in liferent, and John Smith in fee, and assigns the disposition and procuratory therein granted to him by Andrew Sutor, whereupon the Smiths are infert as assignees to the disposition and procuratory, but Ronald Brown the cedent was never infert. James Brown the annualrenter pursues pointing of the ground, wherein the Smiths compear and *allege*, That the pursuer's infertment is null, neither being clad with possession, nor given by one who was infert, or had power to give infertment, but by Ronald Brown, who was never infert.—It was *answered*, *imo*, That Ronald Brown's disposition (before any infertment) was transmissible by assignation, and the consitution of this annualrent imported an assignation, and the registrate sasine was equivalent to an intimation; *2do*, Infertment having followed upon Ronald Brown's disposition, albeit in the person of his assignee, yet it compleats his right, and makes it a real right, and as supervening accesseth to the annualrenter.

THE LORDS sustained the defence, and repelled both the replies, and found, That an assignation to an incomplete real right, though it had been directly done and intimate, had no effect against a singular successor completing his right by infertment; and found, That the real right did never access to the annualrenter's author Brown, who was never infert, but only to Smith, the author's assignee.

*Fol. Dic. v. 1. p. 183. Stair, v. 2. p. 428.*

1710. December 8.

JOHN RULE, Son to the deceased JOHN RULE, Chirurgion in Dumfries, against ANDREW PURDIE Merchant in Edinburgh.

No 77.

A naked disposition of lands was found to denude the

MARTIN NEWAL, merchant in Dumfries, made a disposition, containing a procuratory of resignation of a tenement of land in that burgh, to James Robson merchant there; who, without being legally infert, disposed it to John Rob-