

ANNUALRENT.

525

(DUE TO CAUTIONERS.)

1668. July 13.

SIR JAMES STEWART *against* The LORD BELHAVEN.

SIR JAMES STEWART being cautioner for the Lord Belhaven to Sir Archibald Primrose, clerk-register, for the sum of _____ whereof there being several years annualrent resting, for which he did grant a new bond, bearing annualrent, did pursue the Lord Belhaven for payment, not only of the annualrents due by the first bond, but of the annualrent thereof since the time that he had given bond bearing annualrent: Which the LORDS would not sustain, seeing the said Sir James did not instruct any just distress whereupon he was forced to make payment and give bond; and found that a verbal threatening was not sufficient, the bond not being registrate, nor any charge given thereupon; so that the payment was voluntary; yet they did modify as much of the penalty as did near come to the half of the annualrents.

Fol. Dic. v. 1. p. 43. Gosford, MS. p. 14.

No 63.

A cautioner having paid annualrent, without legal distress, found to have no title to crave annualrent of annualrent, the payment being voluntary.

1676. June 6.

The LAIRD of STANHOPE *against* The HERITORS of Tweedsmuir.

IN a pursuit at Stanhope's instance, against the Heritors of Tweedsmuir, for relief of a glebe designed to the minister, not only for their proportions of the lands valued, but for their proportions of the annualrents since the designation and minister's possession, which was many years since: It was *alleged* no annualrent, but from the decret *quia usura non debentur, nisi ex lege, vel pacto*, and he doing no diligence, annualrent, during his silence, could not be due.— It was *answered*, That lands disposed and possessed, albeit there be no annualrent due by the disposition; yet they are due, *ob fructus perceptos, et hic est legalis dispositio*.—THE LORDS found that there was no annualrent due, the case not being alike to a disposition for money, and that *mora* hinders.

Fol. Dic. v. 1. p. 44. Gosford, MS. No 856.

No 64.

An heritor was not allowed annualrent from other heritors, on their proportions of the value of land designed to the minister for a glebe. He might have insisted sooner for the value itself.

* * * The same case is thus mentioned by Dirleton, under the following Title:

STENHOUSE *against* The HERITORS of Tweedmoor.

THE Laird of Stenhouse, his lands being designed for a glebe, pursued some of the heritors within the parish for his relief, conform to the act of Parliament: In which case, in respect the pursuit was by the space of eight or nine years after the designation; and the heritors were *in bona fide*, and did possess their own lands, and had made *fructus suos*.

(DUE TO CAUTIONERS, &c.)

No 64.

THE LORDS found, That the defenders were not liable to pay the annualrent, for the sum decerned, from the time of the designation; seeing *usura debentur* only *ex pacto vel mora*. Albeit it may appear, That that relief that is due *ex lege* is at least also effectual, as if it were *ex pacto*; and the very notion of relief imports that the party should be relieved of all damage sustained by him: And the pursuer was prejudged, not only by the want of the value of what he was to be relieved of, but of the interest of it.

Clerk, Gibson.

Dirleton, No 352. p. 168.

No 65.

Found, That an answered letter of credit, with the possessor's receipt thereon, did bear interest like a bill of exchange.

1682: *March.*SIR JOHN FALCONER *against* L. of GRANT.

FOUND that an answered letter of credit, with the possessor's receipt thereon, did bear annualrent, like a bill of exchange, from the time of the advancing of the money, though Major Grant, the receiver thereof, was dead, and the writer of the letter of credit had no prospect of relief; and that the letter of credit did not prescribe in twenty years, as a holograph missive letter, the same being of a date anterior to the act 1679, and not so many as twenty years elapsed since the act. (*See* PRESCRIPTION VICENNIAL.)

*Fol. Dic. v. 1. p. 44. Harcarfe, (BILL of EXCHANGE.) No 160. p. 35.*1683: *March.*CORNET MURRAY and his LADY *against* her SON.

No 66.

FOUND, that when a tutor pays out sums of his own for his pupil's affairs, he ought to have allowance of annualrent, till the time he had or might get in the pupil's annualrents; as was found in Patrick Tailfer and Sandiland's case.*

*Harcarfe, (TUTORS and CURATORS.) No 974. p. 276.*1714. *December 1.*BAILIE SMITH'S CHILDREN *against* The EARL of WINTON.

No 67.

The managers for a person of quality abroad, advanced money to a man to travel to him on business.

THE said James Smith having served the late Earl of Winton for many years in quality of factor, or chamberlain, the present Earl being beyond seas when his father and brother died, and not having even then returned, it was concerted at a meeting of some of his Lordship's friends, That Seton of Tough, and upon his declining the office, Sir Walter Seton, one of their number, should go abroad in quest of the Earl, in order to inform him of the state of his affairs, and to ac-

* Examine General List of Names.