

(DUE by FACTORS.)

No 54.

after the rents fall due, plainly supposes, that at common law they would not be liable for annualrent. The text quoted from the civil law, *l. 10. § 3. De Mandato*, only proves, That a mandatary is liable in annualrents *ex mora*. And annualrents are likewise, by the law of Scotland, due *ex mora*; but then the law has pointed out what is necessary to put the debtor *in mora*, so as to establish a claim for annualrents; which is nothing less than a denunciation upon a charge of horning.

Supposing a claim in equity lay against Lochgary for annualrents, as having had the use of the money; yet cautionary obligations are *strictissimi juris*; and therefore this demand ought not to be extended against Glenbucket, who was no gainer by Lochgary's delay. In the case of Campbell against Rose, the question was not with a cautioner, but with the factor himself, who had intromitted with the money.

The decret against Glenbucket, finding him only liable in the sum of L. 9241, without mention of annualrents, though the libel concludes for annualrents, is in effect a *res judicata* as to this claim. If, for these reasons, no annualrent could have been found due against Glenbucket, far less can they in a question with the crown, as the crown is never *in mora*, but always ready to pay the claims of lawful creditors, when properly ascertained.

'THE LORDS found no annualrent due, none having been decerned for in the decret, nor a registrate horning produced.'

For the Claimant, *Ferguson.*For the Crown, *Macqueen.*Clerk, *Kirkpatrick.**Fol. Dic. v. 3. p. 29. Fac. Col. No 205. p. 367.**W. Nairn.*


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ANNUALRENT due to CAUTIONERS, FACTORS, MANDATARS,  
TUTORS, &c.

As a Recompence for advancing their own Money upon  
their Constituent's Account.

1623. *March 25.*

BAILLIE against NISBET.

No 55.  
Elapsing of  
the term of  
payment and

IN an action of suspension betwixt Sir James Baillie and Nisbet, Sir James being cautioner for the defender, in certain sums, and after registration of the

(DUE TO CAUTIONERS, &amp;c.)

bond, having paid the sum; in the which bond, the principal is obliged to relieve the cautioner of all cost, skaith, and damage, to be incurred by him through his cautionry; the bond being of the nature of a moveable sum, and bearing no annual:—THE LORDS found, that the cautioner might seek his relief, and charge, for payment to him of the annualrent of the principal, for all terms since he made payment thereof to the creditor, albeit he had not sought his relief, and payment thereof many years, and albeit it was a great space after the payment of the principal sum, without any charges of horning, or pointing, or other distresses; seeing the LORDS found, that he being obliged, and the bond registrate, and thereafter payment made, that was a sufficient distress, without any more, to produce this action for relief of the annuals against the party obliged.

Act. Belsbes.

Alt. Nisbet.

Clerk, Hay.

Durie, p. 62.

No 55.  
registration  
of the bond,  
sufficient dis-  
tress to en-  
title the cau-  
tioner to  
claim annual-  
rent of the  
sums paid out  
by him for  
the principal  
debitor.

1627. January 16.

CRANSTON against CRICHTON.

CRANSTON of Moreston pursued the Laird of Frendraught for the principal sum of 500 merks, paid by him as cautioner for the defender's grandfather, 1611, and for the annualrents thereof ever since.—*Alleged*, He ought to be affoizied from the annualrents, because the principal debtor was only bound to relieve the cautioner of the principal sum; and the bond bore not annualrent. And, for the Lords statute 1610, it is only in favours of such creditors as are compelled and forced to pay; but voluntary payment, made by a cautioner undistressed, will not be a good ground to crave annualrent by virtue of that statute; but so it is, that the pursuer paid uncompelled or distressed.—*Replied*, That the day of payment being past, and the bond registered, it was a sufficient distress for an honest man, and he needed not abide a charge of horning; *nam dies interpellat pro homine*.—THE LORDS repelled the allegiance, and found that annualrent was due after payment made by the cautioner.

*Fol. Dic. v. 1. p. 43. Spottiswood (USURY), p. 353.*

No 56.  
The same  
found.

1627. January 24.

L. WAUGHTON against L. INNERWEEK.

IN an action of the L. Waughton's against the L. Innerweek younger, for repayment of some sums paid by the pursuer, as cautioner for the defender, with the ordinary annualrent therefor, since the time of his payment thereof, according to the act of Session, anno 1590:—THE LORDS sustained this action, for the annualrents acclaimed, albeit the pursuer was not compelled by charges of

No 57.  
The same  
found.