
What puts a stop to the course of ANNUALRENT.

No 108.
A charge on an heritable bond did not stop the course of annualrent.

1626. *March 2.*

GRAY *against* TENANTS of Fairniflat.

IN an action to make arrested goods forthcoming, pursued against Graham of Fairniflat, and the Tenants of the lands, in whose hands the farms, addebted by them to the master, were arrested, and desired to be made forthcoming to the creditors: Gray, who was pursuer of this action, for satisfying of the principal debt, and annuals thereof, owing by the said Graham, heritor of the lands, wherein charges being execute upon an heritable bond, for payment of the principal sum, and annualrents, conform to the bond, after requisition made, conform to the clause of the bond; and the party charged contending, that, after the charge, he was not subject in any annual, for any terms subsequent, after the charge: The LORDS found, that, notwithstanding of the charge, the debtor was still subject, in the annualrent, for all terms after the charge, continually while payment was made of the principal sum; and so that the defender might arrest, both for his principal sum, and the annuals thereof.

Act. ———.

Alt. *Hope.*

Clerk, *Gibson.*

Durie, p. 187.

1626. *July 25.*

AUSTINE *against* KER.

No 109.
A bond heritable by stipulation for annualrent being payable upon a simple charge, it was doubted whether the charge, which made the sum moveable, stop the annualrent. The Court decerned for as much of the penalty as was equal to the annualrent due.

MR DAVID HUME being debtor to James Aikman, by an heritable bond, in a sum of money to be paid upon a simple charge, notwithstanding of the clause of annualrent, whereby it was heritable, and being charged by the said James to make payment of the principal sum, and suspended by the said Mr David; the time of this suspension, Ker of Kippilaw becomes caution for payment of the principal sum and annualrents, so far as should be addebted by the said Mr David. This suspension being discussed, and the letters being found orderly proceeded, George Austine, creditor to James Aikman, arrests the principal sum and annualrents in the hands of Ker of Kippilaw, cautioner foresaid in the suspension, and intents action against him to make the same forthcoming, wherein Kippilaw comparing, alleged the sum could not be arrested, because he being cautioner could be no otherways obliged but as the principal Mr David Hume was, for whom he was cautioner, and he was only obliged by an heritable bond, and so not subject to arrestment. This allegiance was repelled, because the sum was made moveable by the charge given to Mr David Hume, by Aikman, before the suspension, wherein Kippilaw was cautioner; which suspension being discussed against Mr David, made the cautioner liable as the principal was. And it being further disputed, that, after the charge, no annualrent could be craved, because the charge making the sum moveable, there was no further obligations for annualrents,