

(DUE TO CAUTIONERS, &c.)

ceived in his name, and offered to assign the same; whose declaration the LORDS found could not prejudice the assignee, being made after his assignation; and because Mr Black took the assignation under trust to another than to himself, albeit he was the only true payer of the sum, the same yet standing in the person of Geichan, who was not denuded before the assignation made to Dick.—THE LORDS refused to allow the annualrents against William Dick, without prejudice to seek the same against Archibald Primrose, *prout de jure*. (See COMPENSATION, RETENTION.)

Act. *Hope & Nicolson.*Alt. *Stewart & Lawrie.*Clerk, *Scot.**Fol. Dic. v. 1. p. 43. Durie, p. 312.*

No 58.

1627. November 15.

DICK against BLACK.

WILLIAM DICK, is assignee by Archibald Primrose, to a decret of 27,000 merks, obtained by him against Patrick Black, charger.—Patrick *suspends*: He must have compensation of 2000 merks principal, wherein Archibald and Patrick were bound as principals, cautioners, and sureties, to Gilbert Scot, and whereof Archibald was obliged to relieve Patrick in that same bond, and of all damage and interest; whilk bond is registered against Patrick; and must have compensation of the annualrent thereof, since the translation made of the bond by John Wood, assignee thereto, in the person of William Geichan, who declares he took the translation in his own name, to the behoof of Patrick, having paid the sum for Patrick, whom Archibald was obliged to relieve; and by the statute of Session, a cautioner paying sick as Patrick's, was in effect in his right to the several annuals frae the principal, since the distress.

Answered: No compensation against William Dick, as assignee of the annuals nor principal: Not of the annuals; because the bond bears none; and Patrick was not a cautioner, but he and Archibald both principals; and the statute must be strictly interpreted. Farther: Neither of annuals nor principals; because Patrick has not made payment, but be the contrary. The translation produced bears William Geichan to have paid; and so non-liquet that Patrick paid.

Answered: Geichan declares he paid for Patrick, and took the translation to his behoof.

Answered: No declaration made be a third party, after the assignation made to William Dick, can make up a distress in the person of the cedent's debtor, to import compensation against the assignee of annuals, not contained in the bond.—Finds compensation for the principal sum, but not of the annuals.

Fol. Dic. v. 1. p. 43. Nicolson, (ANNUALRENT.) MS. p. 9.

No 59.

Before the act of federunt 1590, no annualrent was allowed to a cautioner for sums paid out by him upon the principal debtor's account, where the bond carried none.