

(DUE *ex mora.*)

fee, proceeded to denounce.—The pursuers *answered* to the *first*, That it was notour, and attested by the keeper of the signet, that Richard was reputed in Scotland, to be in his authority till the 18th of May 1659, till which the signet was open, and many letters past in his name; and this denunciation was upon the sixth of May, and the charge in April.

In respect whereof, the LORDS repelled to first defence; they repelled also the second defence, as to the annualrent of what was found due by the last decret; they repelled the third defence, because the usurper had cried down regalities; and found the fourth defence relevant, *scripto vel juramento*, viz. That there was a deliverance stopping execution the time of the denunciation.

Fol. Dic. v. 1. p. 38. Stair, v. 1. p. 168.

No 30.

1628.

DOUGLAS *against* FRASER.

A debtor is denounced to the horn by his creditor. The debtor dies. The creditor pursues the defunct's relict, as intermissatrix with his goods and gear, to pay the principal debt and annualrent thereof since his decease, by virtue of the act of Parliament, whereby annualrent is due to the creditor since the horning.—THE LORDS found, That the executors and intromitters are not subject to pay any annualrent due by the defunct at the time of his decease, except the executors or intromitters had been denounced to the horn themselves.

Fol. Dic. v. 1. p. 38. Auchinleck, MS. (INTROMISSION.) p. 103.

No 31.

A defunct owed, at his decease, annualrent upon denunciation, not *ex pacto*; executors found not liable. They would be liable only from their own denunciation.

1642. July 8.

HUNTLY *against* MANSON.

ONE Huntly having obtained decret against umquhile Mr John Manson, for payment of an hundred and fixty pounds, conform to his bond granted thereon, and the said Mr John being denounced rebel, for not payment thereof, and dying rebel, after his decease 20 or 24 years, he pursues his heir, for payment of the said sum, and of the profits, and annualrents thereof, of all years since he was rebel, as well during the rebel his own lifetime, as of all years since the time of his death, and continually, while the principal sum be paid.—This pursuit was sustained against the heir, not only for all years since the debtor was denounced, by this creditor, during the debtor's lifetime, but also for the years since the rebel's decease, and continually while the payment be made by him of the principal sum.

A&C. Baird.

Alt. Heriot.

Clerk, Scot.

Fol. Dic. v. 1. p. 38. Durie, p. 898.

No 32.

An heir found liable for annualrent, due by the defunct upon denunciation.