

{ What puts a stop to the course of Annualrent. }

specially against the cautioner in a suspension: The LORDS found, that albeit there appeared some probable argument, why, after the charge, the clause of the obligation anent payment of the annualrents ceased; yet that the debtors delayed to pay annualrent after the charge, should not be prejudicial to the creditor, and help the debtor: And, therefore, they found, that the cautioner should pay proportionally, as much of the penalty of the bond as effeirs to the annualrent of all terms since the charge, which preceded the time of the arrestment; for the which, the LORDS sustained the action against the cautioner, seeing he had obliged himself, at the suspension, to pay what annualrent the Lords should find to be owing.

*Clerk, Hay.*

*Fol. Dic. v. I. p. 45. Durie, p. 225.*

1668. *January 14.*

DOWGAL M'PHERSON *against* ALEXANDER WEDDERBURN.

DOWGAL M'PHERSON having charged Alexander Wedderburn of Kingennie, provost of Dundee, for payment of a sum of money; he suspends on this reason, That the sum was payable to Dowgal and his wife in liferent, and contained a clause of premonition and requisition, and the sum to be consigned in the hands of the dean of guild of Dundee, which was consigned accordingly.—The charger *answered*, That he offered to prove, by the suspender's oath, that he took up the money from the dean of guild, and therefore he must re-produce the same, with the annualrents thereof since the consignment.—It was *answered*, That it being the charger's fault that the suspender was put to consign, because he had not a discharge granted by his wife judicially, that therefore he could not be liable for annualrent, in that he uplifted the sum, unless it were proven he had made profit thereof; but he offered to depone, that he had all the money still lying by him, and got no profit of the same, and that he ought to have uplifted, in regard he was liable for the hazard of the consignment.

THE LORDS found the suspender liable to produce the money consigned, with the annualrent since; seeing he uplifted the same, without difference whether he made profit or not.

*Fol. Dic. v. I. p. 45. Stair, v. I. p. 505.*

4 B 2

No 109.

No 110.

A debtor, upon a relevant reason of suspension, consigned a sum, due by bond bearing interest; and thereafter uplifted it. The course of interest was not stopt in the interim.