

(DUE *en pacto.*)

No 14. Parliament, which they found was correctory of the common law, allowing always before that time, probation of such bargains by witnesses, and declaring that it should only extend *ad futura*.

Fol. Dic. v. 1. p. 37. Gosford, MS. No 925.

1669. *January 13.* GEORGE HUME *against* SEATON of Menzies.

No 15.
A debtor by a missive, having obliged himself to pay annualrent for the time bygone, annualrent was found due also in future.

GEORGE HUME, as assignee by the Earl of Wintoun, to a bond granted to the Earl's factor, for his behoof, having charged thereupon, the creditor suspends; in discussing whereof, it was *alleged* for George Hume, that he ought to have annualrent, because the suspender, by a missive letter produced, written to the umquhile Earl of Wintoun, obliged him to pay annualrent for the time bygone; and therefore ought to continue the same till payment.—The suspender *answered*, It contained nothing as to the annualrents in time coming.

THE LORDS found annualrents due from the beginning, both before and after the letter, though they exceeded the principal sum, seeing once annualrent was promised for some terms.

Fol. Dic. v. 1. p. 37. Stair, v. 1. p. 580.

No 16.

A contract of marriage contained an obligation only to pay a sum at a certain term, with one year's annualrent. Annualrent decerned for, for all terms bygone, since the date of the contract, in respect it was for tocher.

1629. *February 16.* KEITH *against* BRUCE.

KEITH pursued Bruce, cautioner for Conn, who was to give to Keith in tocher-good, 2500 merks. The question was about the annualrent of the sum, since the date of the contract, which bore no annualrent as long as it should remain unpaid; only it reported, that he obliged himself to pay 2500 merks at Martinmas, with one term's annualrent.—THE LORDS found annualrent to be due for all terms bygone, in respect it was for tocher-good.

Fol. Dic. v. 1. p. 37. Spottiswood, (USURY.) p. 353.

1696. *July 17.* NAIRN *against* LINDSAY.

No 17.
In a bond of provision, the term at which annualrent should commence, not being fixed, but to be determined afterwards by

MR THOMAS NAIRN of Craigton against Lindsay of Dowhill; whose father, in the son's contract, had reserved a faculty to burden the lands with 20,000 merks for his younger children's provisions; and having accordingly exerted this power, the question arose anent the term of payment, and *a quo tempore* it should bear annualrent:—Craigton *contended*, Seeing it was not expressed, it became *statim* due; for in all pure obligations, which are neither *ad diem*, nor conditional, if they bear no commencement, (as in some tacks) *pro præsenti tempore præsumitur*.