

1671. July 22. BLAIR of Bethaick *against* BLAIR of Denhead.

PATRICK BLAIR of Bethaick as principal, and Patrick Blair of Ardblair as cautioner, granted bond to Jean Blair, and failing of her by decease, to her children equally amongst them, for the sum of 2550 merks, upon the 5th May 1624. There were five years annualrent resting at the death of the said Jean Blair, and now Captain Guthrie her executor pursues the Representatives of the cautioner for payment thereof; who *allege* absolutor, because the last of these annualrents being due *in anno* 1630, there are 40 years run before this pursuit, or any other diligence; and so the bond itself is prescribed, and specially these years' annualrents. The pursuer *replied*, That the prescription was interrupted, in so far as a part of the principal sum was paid within the years of prescription. It was *answered* for the defender, That the payment being made to the daughters, of the principal sum, it could have no effect as to the annualrents preceding Jean Blair's death, which belonged not to her daughters, as persons substituted in the bond, but to her executors; so that the bond might well be preserved as to the principal sum, and yet prescribe as to the annualrents, these being two several rights, and stated in several persons. It was *answered*, That the interruption by payment was sufficient for preserving both principal and annual, for prescription being odious, any deed by which the debtor and creditor acknowledge the right within the 40 years, is sufficient, not only as to the interest of the particular actors, but as to all others who have interest in the same right; as payment of any part of the annualrent by one person, preserves the whole right against all the cautioners and co-principals, though they neither paid nor were pursued within 40 years; so payment of any part of the principal must, in the same manner, preserve the right of the bond as to all annualrents to whomsoever they belong, if they be not 40 years before that interruption, by payment of a part of the principal.

Which the LORDS found relevant. This was stopped on the Lords' own consideration, without a bill from the parties, because by common custom, though annual had been constantly paid for 40 years, yet all preceding prescribed, whereupon it was contrarily decerned thereafter.

1672. February 7.—THIS cause having been formerly decided the 22d of July 1761, when the Lords found, that payment of a part of the principal sum, or annualrents, did exclude prescription as to any annualrents, not only that were within 40 years of the summons, but within 40 years of the last payment; but having immediately thereafter stopped the interlocutor, and having now heard the same reported again;

They found, that albeit payment, either of principal or annual, by virtue of a bond, did interrupt prescription of the bond, as to the principal sum, yet that the annualrent being *annua præstatio*, and an obligation accessory to the obligation for payment of the sum, that, therefore, as to the annualrents, every

No 414.  
Although payment of principal or annualrent interrupts the prescription of a bond as to the principal sum, the annualrent being *annua præstatio*, every year infers a distinct obligation, and prescribes by 40 years silence.

No 414. year imported a several obligation, and every year did prescribe by 40 years silence; so that the payment of subsequent annualrent, or a part of the principal did not interrupt the prescription of any bygone annualrents, if there were no pursuit therefor within 40 years. Otherways they found that bygone annualrents, feu-duties, or the like yearly prestations, might be claimed for 80 years past, if one year had been paid within 40 years last, contrary to the common custom, which doth ever sustain the defence of prescription as to all bygones, 40 years before the summons, albeit payment had been made yearly since the 40 years.

*Fol. Dic. v. 2. p. 128. Stair, v. 1. p. 765. v. 2. p. 64.*

\* \* \* Gosford reports this case :

1672. February 7.—HENRY BLAIR, as executor to Jean Blair, did pursue the Laird of Ardblair, as cautioner in a bond for 1200 merks, whereof the said Jean was liferenter, for payment of the annualrents from the date of the bond, which was *in anno* 1624, until the year 1669. It was *alleged*, That the annualrents were prescribed, not being sought within 40 years after the date of the bond. It was *answered*, That it was interrupted by payment of a year's annualrent within the years of prescription, and so the whole annualrent might be sought from the date of the bond, which was *in anno* 1624, until interruption was made by payment. It was *duplied*, That prescription being once interrupted, all might be sought which were due before the interruption, either rents of lands or annualrents of money.

THE LORDS did only sustain the summons for the space of 40 years before the liferenter's decease, but would not sustain the same for any years preceding 40, notwithstanding the interruption in the case of *annua præstatio*, such as rents of lands or annualrents.

*Gosford, MS. No 467. p. 242.*

No 415. 1671. November 23. ROLLAND *against* CRAIGIEVAR.

A PARTY claiming exemption from the jurisdiction of a regality not having answered to the Court for above the space of 40 years, but the Sheriff-court only; this answer was not sustained, that the jurisdiction being exercised as to others, was preserved as to the whole.

*Fol. Dic. v. 2. p. 129. Stair.*

\* \* \* This case is No 35. p. 10724.

\* \* \* See 28th November 1676, Sheil against Parishioners of Prestonhaugh, No 61. p. 10761.