

(DUE by *lucrati*.)1628. February 7. N. HOME *against* L. of RENTON.

MONEY due for the price of land, if it, or any part of it, be retained by the buyer of the land, and he possess the land likewise, he will be liable in payment of annualrent for the same, though he be not obliged thereto by contract, as was found between the Laird of Durie and my Lord Ramfay (No 80. p. 542.)

*Fol. Dic. v. I. p. 42. Spottiswood, (USURY.) p. 352.*

\* \* \* See This case, Durie, p. 340, *voce* HERITABLE and MOVEABLE.

No 83.  
Found in conformity with  
No 80. p. 542.

1628. December 17. LAURIE *against* GRAHAM of Pannalls.

ANNUALRENT found, by the Lords, due, not only for the price of the lands, the buyer having bruiked the land, but also for the price of the discharge of the reversion of the lands.

*Fol. Dic. v. I. p. 42. Auchinleck, (ANNUALRENT.) MS. p. 10.*

No 84.

1663. January 28. LORD BALNAGOUN *against* Mr THOMAS M'KENZIE.

BALNAGOUN as donatar to the escheat of his father, pursues Mr Thomas M'Kenzie for the price of some lands sold to him by his father, and for the annualrents since.—It was *answered* for the defender, That there was no annualrent due by the minute; and albeit it was the price of land; yet Balnagoun had never made Mr Thomas a right to this day, but had forced him to be at a huge expences and plea, and so was *in mora*, that the price was not paid; and albeit he did possess the lands, it was by redeeming wadsets thereupon, contained in the minute.

THE LORDS found Mr Thomas liable, either for the annualrent, or for the surplus of the rents of the land, more than paid the annualrent. In this process, it was found, that the probation of a tenor, before an inferior judge, was null. (See JURISDICTION, Prorogation of.)

*Fol. Dic. v. I. p. 42. Stair, v. I. p. 164.*

No 85.  
Found in conformity with  
No 82. p. 544.

1684. February 26. EARL of NITHSDALE *against* DUKE and DUCHESS of BUCCLEUGH.

IN the cause betwixt the Earl of Nithsdale and the Duke and Duchess of Buccleugh, reported by Kemnay; 'THE LORDS found, though the minute of sale of

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No 86.  
Found, that  
though a mi-

(DUE by *lucra*.)

No 86.  
 nute of sale  
 of lands men-  
 tioned no an-  
 nualrent, in-  
 terest was  
 due from the  
 date, *ex natu-  
 ra rei*.

‘ the lands mentioned no annualrent, yet the price behoved to bear annualrent  
 ‘ from the date of the minute, *ex natura rei*, without paction; though it was  
 ‘ offered to be proven, that they were in possession of the lands, dispoised by the  
 ‘ minute, many years before the same, by virtue of the wadsets and other rights,  
 ‘ and so did not attain the possession by the minute; and though it was never  
 ‘ perfected: But the Lords ordained the securities yet to be perfected, and the  
 ‘ price detained, till incumbrances be purged.’ See the like decided in Stair,  
 28th January 1663. Balnagoun, No 85. p. 545.

December 24. 1685. The Earl pursuing for the price of the barony of Langholm, (which was found *supra*, 26th February 1684, to bear annualrent,) conform to the minute: It was *alleged*, they could not pay till the incumbrances were purged.—*Answered*, They needed not, because they were *alunde* secured, viz. by wadsets and expired comprisings, and forty years prescription.—*Replied*, That was no sufficient ground whereon to pay a price, seeing there might be latent orders of redemption and interruptions.—THE LORDS found, That the defender condescending upon incumbrances by a note under the hand of the Keeper of the Register, they ought to be purged, reserving *contra producenda*.

THE LORDS farther considered the cause on the 29th of January, and whether the special adjudication led by Nithsdale against himself, in Monmouth's name, for implement of the minute be a sufficient security. The Dukes's Procurators gave in a declinator against the Chancellor and Treasurer, as being brothers-in-law to the Countess of Nithsdale. And, on the 4th of February, they found the note of incumbrances under the Keeper of the Register's hand sufficient, and that the special adjudication wanting a procuratory from the Dukes to lead it, was no valid right; though the minute is a tacit procuratory and mandate; and recommended to three of their number to settle the parties. (See REDEMPTION.)

*Fol. Dic. v. 1. p. 42. Fount. v. 1. p. 272. & 387.*

1707. July 23.

ANDREW BAILLIE of Parbroth, *against* DAVID WALKER of Harlawshiels.

No 87.

The grantor of a bond for the price of a liferent affecting lands purchased by him, was found liable for annualrent from his entry to the possession; al-

IN the process against David Walker of Harlawshiels, at the instance of Andrew Baillie of Parbroth, for the bygone annualrents of a bond for 1750 merks granted by the defender to Margaret Jackson, relict of William Dunbar in Harlawshiels, as the price of her liferent annuity of L. 20 Sterling, affecting the said lands purchased by the defender, payable at the first term of Whitfunday or Martinmas after his, the purchaser's, right to the lands should be ratified by his author's heirs, with annualrent from the term of payment; to which bond the pursuer had right by assignation from Margaret Jackson.