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 simulation that
 the rebel was
 suffered to
 continue to
 possess a
 house, the
 rents of which
 fell under the
 escheat.

tenants for mails and duties, and to make the rents forthcoming upon these ar-
 restments. Compearance is made for Sir Robert Murray, in whose name
 James Dalgleish, a creditor of Sheirers, had taken the gift of his single and
 liferent escheat; and craved to be preferred, on this ground, that their brother
 was registered at the horn before he granted them the disposition and infest-
 ment founded on; after which he could do no voluntary deed to the prejudice
 of the fisk and creditor who had denounced, though it was in implement of
 their bond of provision. Whereupon they repeated a reduction of the gift,
 on this ground, that it must be presumed simulate and collusive, and for the
 rebel the common debtor's behoof, in so far as the donatar suffered him to con-
 tinue in the quiet and peaceable possession of a house, the rent whereof fell
 under his escheat, and made a considerable part thereof, and had not removed
 him now by the space of five or six years. *Answered*, He had completed his
 gift, by obtaining decreets both of general and special declarator, and put him-
 self in possession of all the lands, except one little house the debtor possessed
 by bangistry, and was dwelling in it in his father's lifetime, and against whom
 he was *in cursu diligentia*, but was hindered by these parties competing their
 opposition, and laying on termly arrestments; and whatever such an imagi-
 nary simulation and connivance might operate against a single escheat, in de-
 taining of moveables; yet it signified nothing in the possession of lands, the
 possession whereof we daily see bankrupts detain in spite of their creditors.—THE
 LORDS found there was a difference betwixt a rebel's sitting still in a house after
 a gift and declarator, and his lifting rents from other tenants, where he was not
 in the natural possession himself, which the donatar ought to interrupt; and
 therefore found no simulation in this case, and assoilzied from the reduction,
 and decerned in the mails and duties, preferring the donatar.

Fol. Dic. v. 2. p. 158. Fountainhall, v. 2. p. 370.

1713. February 19.

JOHN WHITE, late Bailie of Kirkcaldy, *against* DANIEL REID.

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A gift of life-
 rent escheat
 not found to
 be simulate
 and null for
 the rebel's
 continuing to
 possess a
 small part of
 his estate re-
 mote from the
 rest, the do-
 natar's assig-
 nance having
 so far prose-
 cuted his
 right as to ob-

IN the competition for the mails and duties of the lands of Birkhill, betwixt
 Bailie White and Daniel Reid, the LORDS having, No 16. p. 37., found, That
 the Bailie, as deriving right to an adjudication of the said estate, by dis-
 position from Sir David Arnot, after his single and liferent escheat was gifted
 and declared in favour of Sir Patrick Scot, Daniel Reid's author, could not
 quarrel the gift upon the 128th act, Parl. 12. James VI, as simulate and null
 by the donatar's allowing the rebel to continue in possession; Bailie White
 obtained a second gift of Sir David's escheat, and insisted for preference upon
 the foresaid ground, that the gift to which Daniel Reid pretends right, was si-
 mulate and null by the said act 125th, in so far as Sir Patrick Scot, obtainer

thereof, and Sir William Bruce, his assignee, used no diligence thereupon, but suffered Sir David, the rebel, to possess his lands of Pitlethy for several years.

THE LORDS repelled the qualification of simulation; in respect Sir William Bruce, the assignee, did prosecute his right, so far as to obtain possession of the great part of the rebel's estate, by virtue of the gift and other rights in his person; and found the rebel's continuing to possess a small part of the estate at a distance from the rest of it, is not relevant to infer simulation.

Fol. Dic. v. 2. p. 158. Forbes, p. 673.

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tain possession of the great part of the estate, by virtue of the gift and other rights in his person.

DIVISION. X.

Mandate when presumed.

SECT. I.

Where a factor has paid Annualrent for a course of Years altho' none stipulated.

1671. November 17. HEBURN of Beinstoun *against* LAIRD of CONGILTON.

HEBURN of Beinstoun having married Congilton's sister, was provided by his contract of marriage to 4000 merks of tocher, and Congilton, who is obliged therefor, by a fall from his horse became weak, and for 20 years kept his chamber; during all which time, his mother meddled with his rents, and paid Beinstoun the annualrent of his tocher, till the year 1662. And now Beinstoun pursues Congilton's son and heir for payment of the annualrent since the year 1662, who *alleged*, Absolvitor from the annualrent, because the contract of marriage bears none, *et usura non debentur nisi ex facto*. The pursuer *replied*, That use of payment of annualrent constitutes annualrent, so that Congilton's mother having paid annualrent till the year 1662, it was due thereafter. It was *answered*, That use of payment of annualrent by the creditor himself may constitute the same thereafter; but payment thereof by his mother cannot constitute the same, unless her warrant were proved, which neither can be proved nor presumed, Congilton being weak, and incapable by his fall; and as his

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It being held that the use of paying annualrent, where none has been stipulated, constitutes a right to demand it in future, it was found that where a mother acting for her son paid such annualrent, a mandate was to be presumed and he was bound for the future.