

neither of which can be alleged in this case; for the words "justly addebted and resting" do not argue necessarily, or imply, that the money was borrowed and received at the granting the bond; but it is to be presumed, *ut actus valeat*, that the bond was granted for money owing by the granter to the receiver at Martinmas; and it was reasonable to make it bear annual-rent from the time the money fell due; and though the bond be uncautiously written, for not expressing when the money was first due to the creditor; this oversight cannot be sustained as a ground to charge the guilt of usury upon the pursuer, who is not the original creditor, but an assignee for an onerous cause, especially considering, that no annual-rent hath been paid as yet.

The Lords found, that the pursuer is not guilty of usury, and therefore repelled the defence.

Forbes, p. 537.

No. 26.
from a term five months and twelve days before the date of the bond, not guilty of usury, because the money was supposed to have been borrowed at the said preceding term.

1714. *January 29.*

The TOWN of ABERDEEN *against* ROBERT MARTIN of Burnbrae:

In the discussing of the suspension of a charge at the instance of the Town of Aberdeen against Robert Martin, for payment of L.1000, and bygone annual-rents thereof contained in a bond granted by the said Robert Martin to the Dean of Guild of the said burgh; the Lords found usury not incurred by the granting one discharge for a year's annual-rent of the said L.1000 from Lammas 1709, to Lammas 1710, and another discharge of annual-rent thereof from Whitsunday 1710, till Whitsunday 1712; for the granting of two discharges for one year's or term's annual-rent by mistake, doth not oblige the discharger to impute the additional sum received in payment of the principal, whereas usury is the taking wittingly more annual-rent for one year or term than law doth allow.

Forbes MS. p. 70.

No. 27.

1718. *February.*

SINCLAIR of Barrack *against* SUTHERLAND of Little Torbol.

Murray of Clairden and Sutherland of Ham, were conjunctly bound, *anno* 1700, to pay £.1600 Scots by bond, which came by progress into the person of Sinclair of Barrack. In November 1714, the aforesaid principal sum and all the bygone annual-rents being due, Barrack demanded his money from Clairden, and Sutherland of Little Torbol, the representative of Ham, the other obligant; but they not being ready at the time, agreed, upon the creditor's superseding any demand till Candlemas 1715, to pay him the whole sum, with the annual-rents thereof due at that term, and failing of payment, to accumulate all the interests, with the principal

No. 28.
Usurious paction.