

where the Court found the objection cut off by an indemnity, which it could not, if it annulled the debt; and Arniston seemed inclined to be of that opinion; though now since the act 12th *Annæ*, where the usury is committed in the original contract, it voids the contract; yet usury committed afterwards does not annul the bond; and Earl Ilay observed, that we had all overlooked that the discharge does not specify the particular sum received, and if the interest of the interest was discounted, there was no usury. We found no sufficient evidence of usury.

No. 2. 1742, Jan. 5. *BLAIR against BLAIRS.*

THE Lord Kilkerran, Ordinary, found that taking an heritable bond in 1709, and infestment of annualrent thereon for an annualrent, at the rate of 6 *per cent.* was not usury, because the statutory interest then was 6 *per cent.*; only the debtor was allowed retention of a half *per cent.* 2dly, That the creditor's exacting 6 *per cent.* downwards to 1722, though it was usury, yet he being dead, the penal consequences ceased, and his heir was only bound to discount the sums overpaid; and this day we adhered, and refused a reclaiming bill without answers.

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VIRTUAL.

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No. 1. 1736, Feb. 14. *ANN JOHNSTON against JAMES AFFLECK.*

THE Lords adhered, and found that a general discharge did not include the debt formerly assigned, though the assignation was not intimated.

No. 2. 1749, Jan. 17. *PRENTICES against CATHERINE MALCOLM.*

FIND that the heirs of Jean Prentice have no election, nor no action for the L.1000 sterling.

No. 3. 1753, Feb. 15. *MR HALDANE against THE DUKE OF DOUGLAS.*

THE Marquis of Douglas having given his daughter, Lady Jean, bond of provision only for 20,000 merks, the Duke her brother, in 1719, augmented it to 50,000 merks, payable at her marriage, but with annualrent from the date, but reserved a power to revoke and alter as to the additional 30,000 merks; and in 1728, Lady Jean having occasion for some money, the Duke lent her at different times L.700, for which she gave him two bonds in the usual form, with annualrent and penalty; and in 1736, after the death of the Marchioness her mother, he gave her a bond for an additional annuity of about L.161 sterling, making, with the interest of the 50,000 merks contained in the former bonds (which are therein shortly mentioned) L.300 sterling, which he obliged him during his pleasure to pay her at four terms in the year, but reserved to himself