

(DUE *ex mora.*)

No 28.

clause of the statute, this diligence preserved entire whatever fell due within the seven years: From which it was *pleaded*, That there could be no dispute of the principal sum, after the above charge of horning; and as for annualrent, though the same could not be due by stipulation, the cautionary obligation being at an end by the lapse of seven years, it was nevertheless due in consequence of the denunciation which followed upon the said charge of horning.

Objected for the defenders, That the denunciation was at the market cross of Edinburgh, and not at the market cross of the shire where the cautioner dwelt; and therefore could not have the effect to make the sum bear annualrent.

Answered: That the denunciation at the market cross of Edinburgh is sufficient to all legal effects, except that of escheat singly; that, in particular, it is sufficient for a caption, which deprives a man of his natural liberty, and therefore to be considered as one of the greatest pains of law; *multo magis* ought it to be sufficient for making the sum bear annualrent, which is not so much as a penalty, being only given *nomine damni* for the creditor's wanting the use of his money.

THE LORDS found, That a denunciation at the market cross of Edinburgh, against a person not living at the time within that particular jurisdiction, has not the effect in law to make a sum bear annualrent.

C. Home, No 243. p. 394.

1747. November 17. WATSON *against* RAMSAY.

No 29.

THE LORDS found, That denunciation against a person out of the kingdom, being only at the market cross of Edinburgh, and not also at the pier and shore of Leith, did not make the sum to bear annualrent.

Fol. Dic. v. 3. p. 28. Kilkerran, (ANNUALRENT.) No 2. p. 29.

* * See the same case, D. Falconer, v. I. p. 295. *voce* LEGAL DILIGENCE.

No 30.

A charge and denunciation having past upon a decree, which was thereafter suspended and restricted to a less sum; annualrent was, notwithstanding, found due on the restricted sum, denunciation having passed.

1663. January 30. RIG of Carberry *against* His CREDITORS.

THE creditors of Carberry having obtained a decret against Carberry, and denounced him thereupon, pursue for annualrent since the denunciation, conform to the act of Parliament thereanent.—The defender *alleged* absolvitor; *first*, because the horning was manifestly null, he being denounced in the name of Richard the usurper, after he was out of his pretended authority. *2do*, Because the decret being suspended, a fifth or sixth part thereof was taken away. *3tio*, The denunciation was not at the cross of the regality of Muffelburgh, where he dwells, but at Edinburgh. *4to*, Before the denunciation he had given in a bill of suspension, whereupon there was a deliverance given, superceding execution, till the bill were seen and answered; in the mean time these pursuers getting the bill to

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fee, proceeded to denounce.—The pursuers *answered* to the *first*, That it was notour, and attested by the keeper of the signet, that Richard was reputed in Scotland, to be in his authority till the 18th of May 1659, till which the signet was open, and many letters past in his name; and this denunciation was upon the sixth of May, and the charge in April.

In respect whereof, the LORDS repelled to first defence; they repelled also the second defence, as to the annualrent of what was found due by the last decret; they repelled the third defence, because the usurper had cried down regalities; and found the fourth defence relevant, *scripto vel juramento*, viz. That there was a deliverance stopping execution the time of the denunciation.

Fol. Dic. v. 1. p. 38. Stair, v. 1. p. 168.

No 30.

1628.

DOUGLAS *against* FRASER.

A debtor is denounced to the horn by his creditor. The debtor dies. The creditor pursues the defunct's relict, as intermissatrix with his goods and gear, to pay the principal debt and annualrent thereof since his decease, by virtue of the act of Parliament, whereby annualrent is due to the creditor since the horning.—THE LORDS found, That the executors and intromitters are not subject to pay any annualrent due by the defunct at the time of his decease, except the executors or intromitters had been denounced to the horn themselves.

Fol. Dic. v. 1. p. 38. Auchinleck, MS. (INTROMISSION.) p. 103.

No 31.

A defunct owed, at his decease, annualrent upon denunciation, not *ex pacto*; executors found not liable. They would be liable only from their own denunciation.

1642. July 8.

HUNTLY *against* MANSON.

ONE Huntly having obtained decret against umquhile Mr John Manson, for payment of an hundred and fixty pounds, conform to his bond granted thereon, and the said Mr John being denounced rebel, for not payment thereof, and dying rebel, after his decease 20 or 24 years, he pursues his heir, for payment of the said sum, and of the profits, and annualrents thereof, of all years since he was rebel, as well during the rebel his own lifetime, as of all years since the time of his death, and continually, while the principal sum be paid.—This pursuit was sustained against the heir, not only for all years since the debtor was denounced, by this creditor, during the debtor's lifetime, but also for the years since the rebel's decease, and continually while the payment be made by him of the principal sum.

A&C. Baird.

Alt. Heriot.

Clerk, Scot.

Fol. Dic. v. 1. p. 38. Durie, p. 898.

No 32.

An heir found liable for annualrent, due by the defunct upon denunciation.