

(DUE *ex pacto.*)

No 21.

he could not assign it to any stranger, nor apply it to any other use but the specific destination of his second Lady and children, who did not represent him in it; but on his exercising the faculty, it became a debt, and the children of the second marriage creditors for it.—THE LORDS found it personal, and therefore preferred the children to the creditors; though in most cases creditors are more favourable, and that it might open a door to fraud; but the LORDS could not evite the *jus quaesitum* that seemed here to arise to the son of the second marriage.

Then Kinfauns *alleged*, That, however the Lords had found him liable for the principal sum, yet it could bear no annualrent, which is only due *ex lege vel pacto*, neither of which took place here; so that it could never bear annualrent till it were uplifted, or he denounced for payment.—*Answered*, The nature of the faculty and provision imports annualrent; for 20,000 merks being provided for a wife of a second marriage and her children, that must necessarily be understood to be to her in life-rent, and to her son in fee; and a provision even to a bastard daughter was found to bear annualrent, though not mentioned, 25th June 1664, Margaret Inglis *contra* Inglis, (*infra, b. t.*)—THE LORDS found this sum bore annualrent from the first term after the dissolution of the marriage by Kinfaun's death, for the relic's use, even as she entered to her other life-rent.

Fol. Dic. v. 1. p. 37. Fount. v. 2. p. 59.

No 22.

A sum was provided in a contract of marriage, to the husband and wife in conjunct fee and life-rent, and to the heirs in fee; whom failing, to be at the disposal of the wife. No annualrent being stipulated, found to bear none; and to be heritable, and exclusive of the *jus mariti*.

1733. June 16. MILLER *against* SINCLAIR and MURRAY.

ONE, in his contract of marriage, bound himself to provide a certain sum to himself and spouse, in conjunct fee and life-rent, and to the heirs of the marriage; but, in case of his predeceasing without heirs of the marriage, his spouse was to have power to dispose of the sum: This event happened, and the question occurred, whether the sum bore annualrent, which would entitle her second husband to the *jus mariti* only? No annualrent was stipulated in the contract; but it was *argued*, That the provision of life-rent was virtually a stipulation for annualrent.—THE LORDS found the sum heritable, and that it fell not under the *jus mariti* of the second husband.

Fol. Dic. v. 1. p. 37.

1630. July 21. TUTOR of Vallange *against* DR FORRESTER.

No 23.

A pupil's step-father gave bond to the tutor, to be

UMQUHILE Robert Vallange, burgess of Glasgow, in his testament, nominated his spouse tutrix to his bairns, and other two friends with her; who also nominate her executrix testamentar; by virtue whereof, she intromits with his goods and

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gear, and before year and day, marries Dr Forrester, whereby her tutory ceases; yet she continues intromissatrix for the space of three or four years after the marriage. The other two tutors obtain bond of Dr Forrester, that he shall be countable for his wife's intromissions: They charge him, conform to his bond, for the sums intromitted with by his wife, and for the annualrent.—He suspends, *alleging* he ought not to pay annualrent, because his bond bore not the same *per expressum*.—THE LORDS ordained him to be countable for the annualrents.

Fol. Dic. v. 1. p. 38. Auchinleck, MS. (TUTOR.) p. 205.

No 23.
accountable for his wife's intromissions; found liable for annualrent, though not mentioned in the bond.

ANNUALRENT due *ex mora.*

1673. February 11. SMITH *against* WAUGH.

IN a pursuit at the instance of Robert Smith against Mr John Waugh, referred to an auditor, this query was reported, whether annualrent was due after denunciation, albeit the horning was not registrate, and so was alleged to be null by the act of Parliament.

THE LORDS found, That albeit the want of registration did annul the horning as to escheat, by the old act of Parliament; yet that it was not null as to inferring annualrent by the act of Parliament 1621, bearing expressly annualrent to be due from the date of the denunciation, without any mention of registration, and annualrent being very favourable after all diligence, which is due in most nations by delay or litifcontestation, and with us is not due but by paction, even not by sentence, but only by horning and denunciation, wherein the debtor hath no reason to object against the creditor's favour, in not registering him at the horn, to make his escheat fall.

Fol. Dic. v. 1. p. 38. Stair, v. 2. p. 171.

No 24.
Denunciation makes the sum bear annualrent, though the horning be not registrate.

1665. January 26. GEORGE HUTCHISON *against* DICKSON of Lonehead.

GEORGE HUTCHISON pursues Dickson, for a sum of money, and for the annualrent since the denunciation of the horning; whereupon the defender *answered*, That the horning was only at the market cross of Edinburgh, where the defender dwelled not, and so was null, and could not give annualrent.—It was *answered*, That albeit such hornings be not sufficient for an escheat, yet they are suffi-

No 25.
A horning denounced at the market cross of Edinburgh, where the debtor dwelt not, although suffi-