

(DUE by EXECUTORS.)

1779. February 26. MACDOWALL *against* CREDITORS of CRICHEN.

No 79. AN executor was allowed a year to gather in outstanding accounts, and six months to dispose of the *ipsa corpora* of moveables, before interest was charged against him. (See No 72. p. 532.)

Fol. Dic. v. 3. p. 30. MS.

ANNUALRENT due by those who are *lucrati*, as having had the use of money belonging to others.

1624. February 17. L. DURIE *against* LO. RAMSAY.

No 80.
A purchaser of lands being *lucratus*, by the rents, must pay interest for the price, whether stipulated in the contract or not, and although arrested in his hands

IN an action pursued at the instance of Robert Durie, sometime of that ilk, against the Lord Ramsay, for payment of certain sums of money resting owing of the price of the lands of Scots-Craig, sold by the pursuer to the Lord Ramsay; which, albeit, by the contract of alienation, were discharged, and granted to be paid, yet were truly owing, and were not paid; and also for payment of ten for each hundred of the saids sums yearly, since the term at which the principal sums resting should have been paid. The LORDS sustained the action for the said profits, albeit it was *alleged*, That the defender should not be decerned to pay any profit, seeing the contract obliged him not to pay any profit or annual, *et quod usura non debentur nisi ex pacto*. Likeas the money was arrested in his hands by the pursuer's creditors, which put him in *bona fide* not to pay the principal sum, and so with reason ought to free him from profit, seeing he was ever ready to pay the principal sum, if he had been freed of the arrestment. The LORDS repelled this allegiance, and found the defender ought to pay the principal sum, with the profits thereof, continually since the term appointed for payment thereof, notwithstanding of the arrestment; in respect that the defender hath bruiked the lands continually since the alienation of the same to him, and also hath retained the money, which was the price thereof, in his own hands; and it is against reason and conscience both to retain the money, without paying annual therefor, and to bruik also the whole profits of the lands.

A&N. Nicolson.

Alt. Aiton.

Clerk, Gibson.

Fol. Dic. v. 1. p. 42. Durie, p. 110.