
What puts a stop to the course of ANNUALRENT.

No 108.
A charge on an heritable bond did not stop the course of annualrent.

1626. *March 2.*

GRAY *against* TENANTS of Fairniflat.

IN an action to make arrested goods forthcoming, pursued against Graham of Fairniflat, and the Tenants of the lands, in whose hands the farms, addebted by them to the master, were arrested, and desired to be made forthcoming to the creditors: Gray, who was pursuer of this action, for satisfying of the principal debt, and annuals thereof, owing by the said Graham, heritor of the lands, wherein charges being execute upon an heritable bond, for payment of the principal sum, and annualrents, conform to the bond, after requisition made, conform to the clause of the bond; and the party charged contending, that, after the charge, he was not subject in any annual, for any terms subsequent, after the charge: The LORDS found, that, notwithstanding of the charge, the debtor was still subject, in the annualrent, for all terms after the charge, continually while payment was made of the principal sum; and so that the defender might arrest, both for his principal sum, and the annuals thereof.

Act. ———.

Alt. *Hope.*

Clerk, *Gibson.*

Durie, p. 187.

No 109.
A bond heritable by stipulation for annualrent being payable upon a simple charge, it was doubted whether the charge, which made the sum moveable, stop the annualrent. The Court decerned for as much of the penalty as was equal to the annualrent due.

1626. *July 25.*

AUSTINE *against* KER.

MR DAVID HUME being debtor to James Aikman, by an heritable bond, in a sum of money to be paid upon a simple charge, notwithstanding of the clause of annualrent, whereby it was heritable, and being charged by the said James to make payment of the principal sum, and suspended by the said Mr David; the time of this suspension, Ker of Kippilaw becomes caution for payment of the principal sum and annualrents, so far as should be addebted by the said Mr David. This suspension being discussed, and the letters being found orderly proceeded, George Austine, creditor to James Aikman, arrests the principal sum and annualrents in the hands of Ker of Kippilaw, cautioner foresaid in the suspension, and intents action against him to make the same forthcoming, wherein Kippilaw comparing, alleged the sum could not be arrested, because he being cautioner could be no otherways obliged but as the principal Mr David Hume was, for whom he was cautioner, and he was only obliged by an heritable bond, and so not subject to arrestment. This allegiance was repelled, because the sum was made moveable by the charge given to Mr David Hume, by Aikman, before the suspension, wherein Kippilaw was cautioner; which suspension being discussed against Mr David, made the cautioner liable as the principal was. And it being further disputed, that, after the charge, no annualrent could be craved, because the charge making the sum moveable, there was no further obligations for annualrents,

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specially against the cautioner in a suspension: The LORDS found, that albeit there appeared some probable argument, why, after the charge, the clause of the obligation anent payment of the annualrents ceased; yet that the debtors delayed to pay annualrent after the charge, should not be prejudicial to the creditor, and help the debtor: And, therefore, they found, that the cautioner should pay proportionally, as much of the penalty of the bond as effeirs to the annualrent of all terms since the charge, which preceded the time of the arrestment; for the which, the LORDS sustained the action against the cautioner, seeing he had obliged himself, at the suspension, to pay what annualrent the Lords should find to be owing.

Clerk, Hay.

Fol. Dic. v. I. p. 45. Durie, p. 225.

1668. *January 14.*

DOWGAL M'PHERSON *against* ALEXANDER WEDDERBURN.

DOWGAL M'PHERSON having charged Alexander Wedderburn of Kingennie, provost of Dundee, for payment of a sum of money; he suspends on this reason, That the sum was payable to Dowgal and his wife in liferent, and contained a clause of premonition and requisition, and the sum to be consigned in the hands of the dean of guild of Dundee, which was consigned accordingly.—The charger *answered*, That he offered to prove, by the suspender's oath, that he took up the money from the dean of guild, and therefore he must re-produce the same, with the annualrents thereof since the consignment.—It was *answered*, That it being the charger's fault that the suspender was put to consign, because he had not a discharge granted by his wife judicially, that therefore he could not be liable for annualrent, in that he uplifted the sum, unless it were proven he had made profit thereof; but he offered to depone, that he had all the money still lying by him, and got no profit of the same, and that he ought to have uplifted, in regard he was liable for the hazard of the consignment.

THE LORDS found the suspender liable to produce the money consigned, with the annualrent since; seeing he uplifted the same, without difference whether he made profit or not.

Fol. Dic. v. I. p. 45. Stair, v. I. p. 505.

No 109.

No 110.

A debtor, upon a relevant reason of suspension, consigned a sum, due by bond bearing interest; and thereafter uplifted it. The course of interest was not stopt in the interim.