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mother's obligation to pay it could not oblige him, much less her use of payment in favour of her daughter, without her son's warrant. It was *answered*, Albeit the obligation or payment of a third party could not constitute annualrent; yet where it was paid by a party who had a presumed warrant as a factor or servant, their payment was sufficient, and their warrant presumed, unless the contrary were proved; much more payment by a mother who meddled with her son's whole estate, and paid the same by her son's means, and not by her own, which the LORDS found relevant, and sustained the annualrent. It was also *alleged*, That the defender, in his father's life, paid a year's annualrent. But the LORDS decided upon the first ground only.

Fol. Dic. v. 2. p. 158. Stair, v. 2. p. 2.

. Gosford's report of this case is No 9. p. 483, *voce* ANNUALRENT.

S E C T. II.

Acts by Wives or Servants.

No 270.

Presumption of a wife's warrant to borrow a small sum, inferred from having in her custody the bond which she impledged for it.

1665. February 4.

PATERSON *against* PRINGLE.

ISOBEL PATERSON having lent to Pringle's wife L. 100 Scots, and having received a bond of Pringle's in paund thereof, he thereafter seeking a sight of the bond, took it away without warrant, whereupon she obtained decret against him before the Commissaries, which he and his wife suspended, on this reason, that he never borrowed any sum from the charger; and if his wife did borrow the same, he knew nothing thereof, or that it was applied to his use, and that she impignorated his bond without his knowledge, or warrant.

THE LORDS found, That her having of the bond in her hand did infer a warrant to borrow the money, and oblige her husband, being a matter of small importance.

Fol. Dic. v. 2. p. 158. Stair, v. 1. p. 264.

No 271.

A servant took off goods from a merchant in his master's name. He was found not

1665. November 17. HOWISON *against* COCKBURN.

THE EXECUTORS of David Howison pursue James Cockburn, for the price of several ells of cloth, which the said James, by his ticket, produced, granted him to have received, in name, and for the use of the Laird of Langtoun, his master. It was *alleged*, Absolvitor, because, by the ticket, the defender is not

obliged to pay the cloth, and doth only act in name of his master, and therefore the merchant ought to have called for the account from his master within three years, which he has not done till many years, long after his master's death. It was *replied*, That the ticket must oblige him, at least, *docere de mandato*, for his doing in name of his master could not oblige his master, so that if he be not so obliged, the merchant loses his debt, and nobody is obliged. It was *answered*, That he who acts with any mandatar, should know his commission, and if he does not know it, it is upon his own hazard; but if the mandatar act, not in his own name but his masters, he does not oblige himself; and if servants who receive in their master's name should be thus obliged to shew their warrant, it would be of very evil consequence, seeing their receipt can be proved by witnesses within three years, and their warrant would not be so probable.

THE LORDS found, That *post tantum tempus*, the defender was not obliged to instruct his warrant, but the same was presumed to have been known to the merchant, unless it be proved by the defender's oath, that he acted without a warrant, or that he did not apply the cloth to his master's use.

Fol. Dic. v. 2. p. 158. Stair, v. 1. p. 309.

1755. July 23. SIR ANDREW MITCHELL *against* MARY GAINER.

MARY GAINER being pursued upon a surgeon's account, for furnishings to her family at London, and the same being referred to her oath, she, *inter alia*, deponed, "That she made no doubt, from the state of John Leitch, her servant, his health, medicines might have been got for him from the shop libelled."

Pleaded for her; A master is not liable for medicines furnished to his servant in this manner.

"THE LORDS found, That the articles of the furnishings to John Leitch, the servant, are presumed to be furnished with the defender's consent and knowledge; and therefore found her liable for the same."

Act. *Wedderburn.*

Alt. *J. Dalrymple.*

J. D.

Fol. Dic. v. 4. p. 127. Fac. Col. No 160. p. 241.

1786. June 21. JOHN SPOTTISWOOD *against* HUGO ARNOT.

THE practice of slaughtering cattle in the places within the town of Edinburgh hitherto used for that purpose, had been long complained of. Many meetings were held by the proprietors of houses in the New Town, in order to obtain relief, at which Mr Arnot attended.

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liable personally, and being pursued long after, was not obliged to instruct his warrant.

No 272.
A master found liable for medicines furnished to a servant with his knowledge.

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Mandate presumed. Where one has attended meetings of parties con-