

(DUE *ex pacto.*)

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 annual-  
rent, though  
not mention-  
ed in the  
bond.

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 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 suffici-

No 25.  
A horning  
denounced at  
the market  
cross of Edin-  
burgh, where  
the debtor  
dwelt not, al-  
though suffi-