

(DUE by *lucrat.*)

No 86.
 nute of sale
 of lands men-
 tioned no an-
 nualrent, in-
 terest was
 due from the
 date, *ex natu-
 ra rei.*

‘ the lands mentioned no annualrent, yet the price behoved to bear annualrent
 ‘ from the date of the minute, *ex natura rei*, without paction; though it was
 ‘ offered to be proven, that they were in possession of the lands, dispoised by the
 ‘ minute, many years before the same, by virtue of the wadsets and other rights,
 ‘ and so did not attain the possession by the minute; and though it was never
 ‘ perfected: But the Lords ordained the securities yet to be perfected, and the
 ‘ price detained, till incumbrances be purged.’ See the like decided in Stair,
 28th January 1663. Balnagoun, No 85. p. 545.

December 24. 1685. The Earl pursuing for the price of the barony of Langholm, (which was found *supra*, 26th February 1684, to bear annualrent,) conform to the minute: It was *alleged*, they could not pay till the incumbrances were purged.—*Answered*, They needed not, because they were *alunde* secured, viz. by wadsets and expired comprisings, and forty years prescription.—*Replied*, That was no sufficient ground whereon to pay a price, seeing there might be latent orders of redemption and interruptions.—THE LORDS found, That the defender condescending upon incumbrances by a note under the hand of the Keeper of the Register, they ought to be purged, reserving *contra producenda*.

THE LORDS farther considered the cause on the 29th of January, and whether the special adjudication led by Nithsdale against himself, in Monmouth's name, for implement of the minute be a sufficient security. The Dukes's Procurators gave in a declinator against the Chancellor and Treasurer, as being brothers-in-law to the Countess of Nithsdale. And, on the 4th of February, they found the note of incumbrances under the Keeper of the Register's hand sufficient, and that the special adjudication wanting a procuratory from the Dukes to lead it, was no valid right; though the minute is a tacit procuratory and mandate; and recommended to three of their number to settle the parties. (See REDEMPTION.)

Fol. Dic. v. 1. p. 42. Fount. v. 1. p. 272. & 387.

1707. July 23.

ANDREW BAILLIE of Parbroth, *against* DAVID WALKER of Harlawshiels.

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The granter of a bond for the price of a liferent affecting lands purchased by him, was found liable for annualrent from his entry to the possession; al-

IN the process against David Walker of Harlawshiels, at the instance of Andrew Baillie of Parbroth, for the bygone annualrents of a bond for 1750 merks granted by the defender to Margaret Jackson, relict of William Dunbar in Harlawshiels, as the price of her liferent annuity of L. 20 Sterling, affecting the said lands purchased by the defender, payable at the first term of Whitfunday or Martinmas after his, the purchaser's, right to the lands should be ratified by his author's heirs, with annualrent from the term of payment; to which bond the pursuer had right by assignation from Margaret Jackson.

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Alleged for the defender : That he could not be liable for annualrents, the ratification aforesaid not being yet procured, and consequently the term of payment not come.

Replied for the pursuer : Though he could not oblige the defender to make payment of the principal sum till the condition were purified by the ratification of his right ; yet he must be liable for annualrents, the principal being a part of the price of lands, whereof he enjoys the profits.

Duplied for the defender : Albeit our custom, favouring natural equity, allows annualrent upon obligations granted for the price of lands, though not provided by any express clause therein : Yet this being introduced contrary to the general disposition of law, which makes interest due only *ex pacto vel lege*, it ought not to be extended to the purchaser of a life-rent ; which hath not, as the price of land, a perpetual cause yielding profit to compensate the payment of annualrents, but may cease the next moment after the sale, by the death of the life-renter. *2do*, Though obligations granted for the price of lands, without mention of annualrents, are found to bear annualrent : Yet where annualrents are declared to commence from a determined period, the annualrents, after the sale till that term, are presumed to be transacted and remitted. *Et quid tam congruum fidei humane, quam ea, que inter eos placuerunt, servare ?*

Triplied for the pursuer : Annualrent, before the term of payment, not being expressly excluded, is due by the provision of law. The reason for mentioning annualrent after, and not before the term, was, because the purchase could not be evicted after the procuring of ratifications from the only persons having interest to quarrel the sale. But it being uncertain, if, or when eviction might occur before that term of payment, therefore annualrent in the said interval was left unmentioned, to be determined by law according to emergencies ; which, in the case of eviction or distress, would stop the course of interest ; and no such thing happening, would make the ordinary interest to be due.

THE LORDS repelled the defences ; and found that the bond bore interest from the grantor's entry to the possession of the land. But thereafter, July 29, 1707, *inter eosdem*, it was found relevant to absolve the defender from annualrents preceding the term of payment of the bond, that it was *actum et tractatum* at the granting thereof, that it should only bear annualrent after the said term, to be proved by the oaths of the writer and instrumentary witnesses. (See PROOF.)

Fol. Dic. v. 1. p. 42. Forbes, p. 190.

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though by the bond, the principal sum was only payable after a condition should be purified, and there was no mention of annualrent, to be paid in the interim.