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ANNUALRENT due by those who uplift Sums bearing  
Annualrent.

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1710. December 22.

ALEXANDER IRVING of Drum, *against* THOMAS GORDON, Son and Heir to  
Mr Thomas Gordon.

THE deceased Alexander Irving of Drum having assigned to Mr Thomas Gordon his creditor in 2600 merks, for his more ready payment, two bonds granted to the cedent for 2716 merks, bearing annualrent, by Walter Robertson and William Souper; upon the assignee's obliging himself by a back-bond to retrocede the cedent in case he paid the 2600 merks, or to order Souper and Robertson to pay to him the superplus 116 merks, in case the assignee got payment of what was due to him by virtue of the assignation: Alexander Irving, now of Drum, pursued Thomas Gordon as representing Mr Thomas his father, (who uplifted the whole sums assigned) for repetition of the 116 merks, with the annualrent thereof since uplifting. The defender was content to pay the principal, but *alleged*, That no annualrent could be required; seeing Mr Thomas Gordon doth not oblige himself in the back-bond for annualrent of the 116 merks, in the case of his uplifting the whole sum assigned; and annualrent is only due *ex pacto vel lege*. So an ordinary factor uplifting money by commission, would not be liable for annualrent of the sums uplifted, though the same bore interest formerly to the constituent; because he is obliged to have it ready by him, when called for.

*Replied* for the Laird of Drum: Mr Thomas Gordon's back-bond did not indeed oblige him expressly to pay annualrent for the 116 merks, but it obliged him to leave it in Souper and Robertson's hand, and to order them to pay the same to Drum; which, if he had done, that balance would have born annualrent, it being a part of the principal sum in their bond: Consequently Mr Gordon, who had the use of the 116 merks ever since Souper and Robertson paid it, must be liable for the interest thereof to Drum, as they would have been, had it remained in their hands till now; and annualrent is sometimes found due without express paction, 2d December 1628, Zair *contra* Ramfay, No 12. p. 484.; 13th January 1669, Hume *contra* Seaton, No 15. p. 486.

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No 95.

A party, assigned a bond bearing annualrent, containing a larger sum than was due to the assignee. The assignee, who uplifted the whole sum, was found liable, not only for the surplus, but for annualrent thereof, from the time he uplifted the money.

(DUE by those who uplift Sums bearing Annualrent.)

No 95.

THE LORDS found Mr Gordon liable for the 116 merks, and the annualrent thereof from the time the same was paid to Mr Thomas his father.

*Fol. Dic. v. 1. p. 42. Forbes, p. 465.*

1736. February 18. COLONEL ERSKINE *against* EARL of LAUDERDALE.

No 96.

One creditor having, by consent, uplifted from a judicial factor, rents due to another, found liable in annualrent thereof.

A FACTOR upon a bankrupt estate, having a considerable sum of bygone rents in his hands, bearing interest, the two preferable creditors upon the estate, who had long disputed which of them was to be ranked first in order, apprehensive of the rents perishing, agreed to divide the same in a certain proportion: In consequence of this agreement, application was made to the Court of Session in the name of one, with consent of the other; and he accordingly uplifted the bygone rents out of the factor's hands; and being many years thereafter pursued by the other creditor upon the agreement, was obliged to repeat the pursuer's proportion of the rents, with interest from the time of uplifting.

*Fol. Dic. v. 1. p. 42.*

1762. November 23. DICKSON *against* HAMILTON.

No 97.

A person, who, by deceiving a weak man, had obtained a bond from him, and ranked on his estate for it; when forced to make repetition 44 years afterwards, was found liable in interest only from citation.

HAMILTON, writer to the signet, got a bond for 4000 merks from Baillie of Walfon, a weak foolish man, on account of services he had done, in negotiating a sale of his estate. It came out, that instead of doing him service, he had betrayed him.

Action was brought by Walfon's Representatives, for restitution against Hamilton's Representatives. The Court found the latter liable.

Then the question occurred, Whether annualrent for 44 years was also due? It was found due upon this medium, that Hamilton had taken decret for the sum, and got himself ranked for it, upon the price of the lands of Walfon, which was bearing interest.

This interlocutor was afterwards altered, and interest allowed only from citation.

*Dreghorn, MS.*