

N.B. Lord Elchies and Lord Arniston gave it as their opinion, in the debate, that an adjudication for bygone annualrents, upon a decret of poiding the ground, would proceed in terms of the statute 1672; and that the proprietor would have the option mentioned in the Act; contrary to the opinion of Stair,—see title Poiding and title Apprising. They founded their opinion upon the words of the Act above mentioned.

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1740. February 14. KILBUCKO against ——.

[Elch., No. 24, *Adjudication*; Kilk., *ibid.* No. 7.]

The Lords found that the adjudication did carry the bygone annualrents in question, and that the heir's not entering was the same thing as if he had renounced; and that, by his contumacy in not entering in obedience to the charge, he cannot be in better condition than if he had formally renounced. Add to this, that his silence in neither entering nor renouncing ought to be interpreted against him, in the same manner as in the Roman law,—see *Tit. Cod. de Jure Delib.*, l. ult. p. 14.

But the chief reason that moved the Lords was, that there was no other form of diligence that could affect these annualrents.

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1740. February 27. LORD DAER against DUKE of HAMILTON.

[Elch., No. 11, *Heritable and Moveable.*]

THIS was a question betwixt the heir and executor of the late Lord Selkirk about the annualrents of heritable bonds. Lord Selkirk had secured certain sums of money by infestments of annualrent, out of his debtor's lands, upliftable, in some of the bonds, at the two terms of Whitsunday and Martinmas, in others at Lammas and Candlemas, by equal proportions. The Earl died in March, and the question came betwixt his heir and executor, about the annualrents of the bonds, betwixt that time, and the last preceding term of payment of the annualrent, viz. Martinmas and Candlemas. The executor contended, that all the bygone annualrents, till the day of the death, belonged to him; because the rule for determining the interests of an heir and an executor, a liferenter and a fiar, did not depend upon the conventional term of payment, *quando dies venit*, but upon the legal, when the rent is due, *quando dies cessit*. Thus, in lands, the rule is not the conventional term of payment betwixt the master and tenant, but the legal terms of Whitsunday and Martinmas, when the rents begin to be due; so that, if the defunct died after Whitsunday, the executor has right to a half-year's rent, if after Martinmas to a whole. The same rule obtained in the civil law in regulating the interests of liferenter and