

(DUE *ex mora*.)

1758. December 7.

ASSIGNEE of Angus and Company, *against* His MAJESTY'S ADVOCATE.

THE assignee of Angus and Company, shopkeepers in Edinburgh, claimed upon the forfeited estate of Cameron of Lochiel, who had been attainted for the rebellion 1745, payment of an account of furnishings made to Lochiel, down to the 24th of June 1745.

The assignee claimed, further, annualrent from a year after the last article of the account.

To this last demand his Majesty's Advocate objected.

*Pleaded* for the claimant: The Lords are in use to give annualrent to tradesmen after the lapse of a year from the last article of their account, on this principle, That the furnisher has a right of indemnification for the loss he sustains by lying out of his money. Lochiel would have been liable, had he not been attainted, for annualrent: If so, the Crown must be equally liable; because the vesting act declares 'That no person or persons whatsoever, having any estate, right, title, or interest, in law or equity, in, to, or out of any of the forfeited estates, shall be in any respect prejudiced by their being vested in his Majesty,' with the exception of debts contracted after the 24th of June 1745; and directs all such persons to give in their claims within a certain time.

*Answered* for his Majesty's Advocate: The Lords sometimes give annualrent from a year after the last article of an account; but this they do not on the principle of indemnifying the creditor for the loss he might otherwise sustain: On the contrary, they give it only in the special case, that the debtor has been *in mora* in his payment; and the debtor will be free if the creditor has been *in mora* to receive. If it is given at all, it is given, not to indemnify the one, but *nomine damni*, and in order to punish the other for his failure of payment in proper time. But in the present case, there has been no *mora* on the side of the Crown. The vesting act provided for the payment of the debts of the traitor; it empowered the Court of Session to ascertain those debts; but till those debts are ascertained, the creditor cannot act, nor can the Crown be *in mora* for not making payment of the debts of the traitor.

The Lords found no annualrent due.

A.G. Ilay Campbell

Alt. The Crown Lawyers.

Fol. Dic. v. 3. p. 28. Fac. Col. No 143. p. 260.

Dalrymple.

No 34.  
Annualrent upon an account for furnishings, from a twelvemonth after the date of the last article, being due only *ex mora*, cannot be charged against the Crown, holding the estate of a forfeited person.