

ANNUALRENT.

541

(DUE BY EXECUTORS.)

1763. June 16.

JOHN FERGUSSON Tidewaiter at Leith *against* ARCHIBALD STEWART Merchant in Edinburgh.

ARCHIBALD STEWART being found liable to account to Elizabeth Brodie, as in right of his brother William, for a fourth part of the moveable subjects which belonged to Margaret Charteris, his mother, (*See Brodie against Stewart, 21st December 1757. Fac. Col. No. 74. p. 124. voce EXECUTOR*); and the said Elizabeth Brodie having conveyed her interest therein to John Fergusson, her second husband, he insisted that Stewart should pay annualrent from March 1750, which was two years after his mother's death, for the balance of the executry in his hands. The LORDS found the defender liable only for the interest of such sums as bore interest at the death of Margaret Charteris.

Aff. Lockhart.

Alt. D. Dalrymple.

Clerk. Hume.

Fol. Dic. v. 3. p. 30. Fac. Col. No 108. p. 254.

A. Wight.

No 77.  
An executor was found liable in interest for such sums only as bore interest at the defunct's death.

1765. December 12.

WATSONS *against* WATSONS.

ROBERT WATSON, merchant in Edinburgh, having been married three times, made provisions in favour of the children of the different marriages.

Upon his death, in 1757, Mary Mearns, his third wife, confirmed executor to him; and an action having been brought by the children of the first marriage, for their provisions, called all parties, having interest, in a multiple-pounding; and a new multiple-pounding was brought by her daughters after her death.

The claims of the children of the first marriage were sustained by an interlocutor of 9th August 1763. After this, a good deal of litigation ensued as to the question, How far interest could be claimed from the executors?

'THE LORDS found the executors not liable for the interest of the subject confirmed, in so far as that subject did not bear interest at the time of the testator's death; but found them liable for the interest of the sums bearing interest from the term after the testator's death; and found them liable in the expences of process, from the interlocutor dated 9th August 1763.'

Aff. Patrick Murray.

Alt. David Grene.

Fac. Col. No. 24. p. 244.

G. Ferguson.

No 78.  
Found as above.

(DUE by EXECUTORS.)

1779. February 26. MACDOWALL *against* CREDITORS of CRICHEN.

No 79. AN executor was allowed a year to gather in outstanding accounts, and six months to dispose of the *ipsa corpora* of moveables, before interest was charged against him. (See No 72. p. 532.)

Fol. Dic. v. 3. p. 30. MS.

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ANNUALRENT due by those who are *lucrati*, as having had the use of money belonging to others.

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1624. February 17. L. DURIE *against* LO. RAMSAY.

No 80.  
A purchaser of lands being *lucratus*, by the rents, must pay interest for the price, whether stipulated in the contract or not, and although arrested in his hands

IN an action pursued at the instance of Robert Durie, sometime of that ilk, against the Lord Ramsay, for payment of certain sums of money resting owing of the price of the lands of Scots-Craig, sold by the pursuer to the Lord Ramsay; which, albeit, by the contract of alienation, were discharged, and granted to be paid, yet were truly owing, and were not paid; and also for payment of ten for each hundred of the saids sums yearly, since the term at which the principal sums resting should have been paid. The LORDS sustained the action for the said profits, albeit it was *alleged*, That the defender should not be decerned to pay any profit, seeing the contract obliged him not to pay any profit or annual, *et quod usura non debentur nisi ex pacto*. Likeas the money was arrested in his hands by the pursuer's creditors, which put him in *bona fide* not to pay the principal sum, and so with reason ought to free him from profit, seeing he was ever ready to pay the principal sum, if he had been freed of the arrestment. The LORDS repelled this allegiance, and found the defender ought to pay the principal sum, with the profits thereof, continually since the term appointed for payment thereof, notwithstanding of the arrestment; in respect that the defender hath bruiked the lands continually since the alienation of the same to him, and also hath retained the money, which was the price thereof, in his own hands; and it is against reason and conscience both to retain the money, without paying annual therefor, and to bruik also the whole profits of the lands.

A&amp;N. Nicolson.

Alt. Aiton.

Clerk, Gibson.

Fol. Dic. v. 1. p. 42. Durie, p. 110.