

ANNUALRENT.

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(DUE *ex pacto.*)1671. November 15. ROBERT HEPBURN *against* The LAIRD of Congletoun.

THE said Robert being affianed by his father, the Laird Beanstoun, to his contract of marriage, whereby Congletoun's father and goodfir were obliged to pay to Beanstoun in tocher, the sum of 4000 merks, did pursue this Congletoun as representing his father, for payment not only of the principal sum, but seven or eight years annualrent, which were yet unpaid.—It was *alleged* for the defender, That he could not be liable for annualrent, because the contract did bear no obligation to pay annualrent, *et usura not debentur nisi ex pacto vel lege.*—It was *replied*, That the defender's grand-mother had been in use of payment of annualrent, for the space of eighteen years, and that after her decease the defender had paid for one year; likeas for staying Beanstoun from using execution for his money, the defender dealt with Sir Robert Hepburn of Keith, who was debtor to the defender, to lend to Beanstoun the like sum, and albeit Sir Robert did take a bond bearing annualrent, yet it being in effect the defender's money, there is no reason that Beanstoun should pay annualrent, and yet get none paid him for his tocher.—THE LORDS did sustain the use of payment by the grand-mother, with the defender's payment for one year, notwithstanding that the grand-mother neither had any order, nor could get any mandate from her son, who during all these years was not *mentis compos*, and knew not of any thing was done in his affairs, and that this defender was a minor, when he made payment of that year, at the direction of his grand-mother, who took upon her to administrate the estate without any authority; which was hard.

Fol. Dic. v. 1. p. 37. Gosford, MS. No 392. p. 196.

* * See the same case from Stair, v. 2. p. 2. *voce* PRESUMPTION.
(Mandate when presumed.)

1675. January 15. CATHCART *against* Row.

IN a pursuit at the instance of Cathcart, for payment of a principal contained in a bond, with annualrent since the date thereof;—it was *alleged*, That the defender could not be liable for payment of annualrent, because there was no obligation in the bond for payment thereof.—It was *replied*, That the defender had been in use of payment of annualrent, and by a missive letter had promised to pay the same for the term subsequent to the former discharges.—THE LORDS did repell the defence in respect of the reply; and found, that the use and custom of paying annualrents, being proven, was sufficient in law to make the debtor liable for all terms following, during the not payment.

Fol. Dic. v. 1. p. 37. Gosford, MS. No 734.

3 P 2

No 9.
The same
found.

No 10.
The same
found.