

(DUE *ex passu*.)

1676. December 20.

CARNEGIE of Balmachie *against* DURHAM of Anachie.

No 11.

The same  
found.

THE LORDS found, That albeit by the common law, annualrent be due for tocher; yet, by our custom, it is not payable, unless it be so provided by the bond or contract for the same; but, in the case in question, they found the defender liable to pay annualrent, in respect the debtor had been in use of payment, at the least, had promised to pay annualrent for certain years bygone; and annualrent once paid, implies a tacit paction to continue the payment of the same.

Reporter, *The saurer-depute*.*Fol. Dic. v. 1. p. 37. Dirleton, No 408. p. 200.*

1628. December 2.

ZAIR *against* RAMSAY.No 12.  
Annualrent  
stipulated for  
one term,  
found ever  
due till pay-  
ment.

IN a pursuit *Zair contra* Ramsay, for payment of the by-gone annualrents, of a sum contained in a bond, which was of this tenor, that the debtor was obliged to pay 1000 pounds at the term in the bond, and in case of failzie, to pay 100 pounds for annualrent and profit thereof, with 300 merks of expences, if the creditor should be compelled to seek and charge for the same; this bond was found to be heritable, and the debtor was found subject to pay the whole byrun annualrents, yearly since the term of payment, albeit the bond bore only the debtor to be bound to pay one year's profit and a penalty, and not to pay yearly that annualrent, so long as the sum was unpaid.

*Fol. Dic. v. 1. p. 37. Durie, p. 403.*

1669. January 13.

EARL of WINTOUN *against* SEATOUN of Minnes.No 13.  
The same  
found.

GEORGE SEATON of Minnes, having borrowed from the Earl of Wintoun's grand-father, the sum of L. 400, and given ticket to one Heriot his servant, payable at Lambmas 1650, and by a missive letter at Martinmas thereafter, directed to the Earl, excusing himself for not payment at the term, and promising to pay annualrent for the time that the Earl had lyen out: This Earl of Wintoun, as having right from the executors of Heriot, did pursue both for principal and the whole annualrents, extending to as much as the principal sum; which the LORDS did sustain, notwithstanding it was *alleged*, That the missive letter was only obligator for payment of annualrent the time preceding, but not for the future; and therefore, the defender was not *in mora*, having offered by the said missive to pay the same to the Earl of Marshall, if the Earl of Wintoun would so order