

(Due by *lucrati*.)1677. July 5. MR GEORGE GRAY *against* JAMES CUTHBERT.

No 93.
In a *condictio
indebiti*, tho'
the Court
would not al-
low of an-
nualrent,
they award-
ed a consider-
able sum in
name of da-
mages, which
was nearly
equivalent.

IN an action at Mr George Gray's instance, as having right by translation from Robert Gray of Skibo, who had made double payment of two several bonds to Cuthbert of Drackies, of one of them to himself, and thereafter of both bonds to Drackies' son, as assignee by his father; did pursue the said Cuthbert of Drackies for repayment, not only of the principal sum, but of the whole annualrents due, not only for the principal, but for the annualrents since payment.—It was *alleged* for the defender, That he could not be liable for the annualrent of these sums paid to him: *1mo*, Because he being but an assignee, he had *bona fide* received the same. *2do*, Annualrents are only due *ex lege vel pacto*, and so are not liable in this case, where there is neither act of Parliament nor law to make the same due.—It was *replied* to the *first*, That the defender, albeit he was an assignee, yet being eldest son to his father, to whom the money was paid, *et in familia paterna*, and the person that in law represents him, he is liable as if the father himself had gotten twice payment, and so was not in *bona fide*.—It was *replied* to the *second*, That the bond which was twice paid, bearing annualrent, being twice paid, they are in as strong a case, as if it were lent money, and it must be presumed that *indebite solutum*, as founded upon that same principle with *mutuum*; and if it were not so sustained, then *quilibet potest lucrati ex suo dolo*, by keeping monies free of annualrent for a long time, until they be recovered in law. *3tio*, Annualrents are due *pro damno et interesse*.—THE LORDS having well considered this case, did find, That by our law and practice annualrents were not due; but upon that ground that they might modify *pro damno et interesse*, they did decern the double of the whole sums which were indebted paid, to be repaid, which did not amount to the full annualrent of the principal sum.

Fol. Dic. v. 1. p. 43. Gosford, MS. No 992.

No 94.
Found in con-
formity with
the above.

1678. July 30. SIR ADAM BLAIR *against* JAMES GILMOUR.

ITS a repetition of a sum paid by him as one of the King's receivers, when it was paid before.—THE LORDS would not sustain the *condictio* for annualrents, because they are only due *ex pacto et lege*, and the King's use of payment was only of his bounty; yet modified a sum in name of damage and interest.

Fol. Dic. v. 1. p. 43. Fountainball, MS.

* * In the case, Lockhart against Ellies, No 41. p. 504. found, That money *bona fide* uplifted, is to be restored without interest, though the money belong to a minor.