

(DUE *ex mora.*)

No 28.

clause of the statute, this diligence preserved entire whatever fell due within the seven years: From which it was *pleaded*, That there could be no dispute of the principal sum, after the above charge of horning; and as for annualrent, though the same could not be due by stipulation, the cautionary obligation being at an end by the lapse of seven years, it was nevertheless due in consequence of the denunciation which followed upon the said charge of horning.

*Objected* for the defenders, That the denunciation was at the market cross of Edinburgh, and not at the market cross of the shire where the cautioner dwelt; and therefore could not have the effect to make the sum bear annualrent.

*Answered*: That the denunciation at the market cross of Edinburgh is sufficient to all legal effects, except that of escheat singly; that, in particular, it is sufficient for a caption, which deprives a man of his natural liberty, and therefore to be considered as one of the greatest pains of law; *multo magis* ought it to be sufficient for making the sum bear annualrent, which is not so much as a penalty, being only given *nomine damni* for the creditor's wanting the use of his money.

THE LORDS found, That a denunciation at the market cross of Edinburgh, against a person not living at the time within that particular jurisdiction, has not the effect in law to make a sum bear annualrent.

*C. Home, No 243. p. 394.*

1747. November 17.

WATSON *against* RAMSAY.

No 29.

THE LORDS found, That denunciation against a person out of the kingdom, being only at the market cross of Edinburgh, and not also at the pier and shore of Leith, did not make the sum to bear annualrent.

*Fol. Dic. v. 3. p. 28. Kilkerran, (ANNUALRENT.) No 2. p. 29.*

\* \* \* See the same case, D. Falconer, v. I. p. 295. *voce* LEGAL DILIGENCE.

No 30.

A charge and denunciation having past upon a decree, which was thereafter suspended and restricted to a less sum; annualrent was, notwithstanding, found due on the restricted sum, denunciation having passed.

1663. January 30. RIG of Carberry *against* His CREDITORS.

THE creditors of Carberry having obtained a decret against Carberry, and denounced him thereupon, pursue for annualrent since the denunciation, conform to the act of Parliament thereanent.—The defender *alleged* absolvitor; *first*, because the horning was manifestly null, he being denounced in the name of Richard the usurper, after he was out of his pretended authority. *2do*, Because the decret being suspended, a fifth or sixth part thereof was taken away. *3tio*, The denunciation was not at the cross of the regality of Muffelburgh, where he dwells, but at Edinburgh. *4to*, Before the denunciation he had given in a bill of suspension, whereupon there was a deliverance given, superceding execution, till the bill were seen and answered; in the mean time these pursuers getting the bill to