

No 4. 3d February 1750; but having claimed annualrent, the Lord Ordinary, by the same interlocutor, found none due.

Pleaded in a reclaiming bill, interest is due to him as a mandatar upon money laid out, l. 12. § 9. *Mandati*. December 1736, Aubray and Cullen against Executors of Ross, No. 68. p. 528. And as the sum allowed for pains was no more than a reasonable gratification, if paid at the time, it follows, that interest is due thereon, after so long a delay of payment.

The LORDS refused the bill.

Per H. Home.

D. Falconer, v. 2. No. 141. p. 165.

* * * Kilkerran's report of this case is No. 70. p. 532. *voce* ANNUALRENT.

No 5.
Where one is by his commission enjoined to insure, and omits it, he becomes insurer himself.

1752. January 7. VAN WYN GARDEN *against* DRUMMOND.

PATRICK DRUMMOND gave commission to Henricus Van Wyn Garden in these terms, 'Sir, You'll please order your brother (at Rotterdam) to ship on board of John Ferguson's ship 30 ankers good brandy, marked D. A, for account of Andrew Wilson and me, and cause insure for the value.' The brandy was accordingly shipped, and happened to fall into the hands of the officers of the revenue.

Van Wyn Garden having obtained decree before the Admiral for L. 38 Sterling against Drummond, as the price of the brandy and freight, Drummond presented a bill of suspension upon this ground, *inter alia*, That mandates are *strictissimi juris*, and to be executed *in forma specifica*; which had not been here done, in so far as the charger had been particularly ordered to insure the cargo, which yet was not done. It is true that the Admiral has disallowed the premium of insurance, (which, though not made, was stated as an article of the charger's claim in the process) in respect the policy was not produced; but that was not enough. He therefore insisted that these his instructions not having been observed, he could not be bound by his commission.

The bill of suspension was nevertheless "unanimously refused."

It occurred to the LORDS, That the Admiral had rather done wrong, even in disallowing the charger's claim for the premium of insurance, and of which they would have given him redress, had he complained of it. For where one is by his commission enjoined to insure, and omits it, he becomes insurer himself. And accordingly, by the practice of the Admiralty in the late Judge's time, the claim for insurance was always sustained, though the policy was not produced; for the reason just given, that if there was no insurance made, he was insurer himself.

Fol. Dic. v. 3. p. 397. Kilkerran, (MANDATE.) No 1. p. 341.