

(What puts a stop to the course of Annualrent.)

1679. *January 22.* FRAZER, &c. *against* HAMILTON.

No III.

However long a bond in the English form might remain due ; it was found the annualrent could not accumulate, so as to exceed the principal sum.

LEYES BURNET, as assignee to Sir Alexander Frazer, having pursued Sir James Hamilton as representing his father, for payment of a bond granted by Sir James to Sir Alexander, when they both resided in England, after the English form, for L. 1600 Sterling in the obligation, and L. 800 in the condition :—It was *alleged* for Sir James, That the doubling of the sum being penal, is at the Lords' modification, and cannot extend any further than the damage and interest of the party.—Whereupon the LORDS restricted the sum to the single bond, and the annualrents thereof, in so far as was not paid ; which annualrents being calculated, did exceed the double bond.—Whereupon it was *alleged* for Sir James, That the duplication of the sum being penal, and restricted by the Lords to the annualrents, these annualrents could never be further extended than to the double bond itself, and then it behoved to sist.—It was *answered*, That although by the event, the annualrents do exceed the stock, yet it is a favour to reduce the same to the annualrent ; for, if Sir James had been but owing a year's annualrent, he would have been liable for no more ; and therefore, seeing he would have had that advantage, he must have the disadvantage, which is through his own long delay : And by the law of Scotland, annualrent being once paid, it is always due, though without paction ; and in this process, an hundred pounds paid is attribute first to the annualrent, and then to the principal sum.—It was *replied*, That there was no annualrent ever here paid, but receipts in part of payment generally ; which the Lords, by their restriction, did attribute first to the annualrent, and then to the principal : And seeing annualrent is only due by law or paction, there is pretended here no law for annualrent, neither is there any paction that can exceed the double bond ; and it were inconsistent that a restriction and modification should exceed the thing restricted.

THE LORDS found the annualrent could not be accumulated further than the extent of the double bond.

Stair, v. 2. p. 678.