

betwixt the parties, to whom the said term's annualrent pertained, whether to the Colonel's heir or his executor; the LORDS found, that the same pertained to the heir, and was not due to the executor, seeing the Colonel died before he could crave the annual, it could not at the time of his decease be reputed *in bonis ejus*, and consequently could not pertain to his executor. See TERM LEGAL and CONVENTIONAL.

Act. *Hop & Baird.*Alt. *Morison.*Clerk, *Gibson.**Durie, p. 96.*

No 68.

1624. June 29. SMITH against ANDERSON'S Relict.

IN a registration pursued by Smith, as executor to his father, against the Relict of Peter Anderson; the bond desired to be registrate, bearing, to pay annual after the term of payment; and it being therefore *alleged*, that it was heritable, and so could not be registrate at the executor's instance;—THE LORDS repelled the allegiance, and found the bond pertained to the defunct's executors, notwithstanding of that clause of paying annualrent, because the defunct, to whom the bond was made, died before the term of payment contained in the bond, so that the clause adjected for payment of annual, in case of failzie of payment of the sum at the term, could not take effect in favours of the defunct, in his own time, to make it profitable to his heir, and therefore that it pertained to his executors.

Clerk, *Scot.**Fol. Dic. v. 1. p. 370. Durie, p. 132.*

No 69.

A bond payable at a certain term, with annualrent after the term of payment, found to be moveable before it fell due, and to go to the executors of the creditor, who died in the interim.

1626. December 21. EXECUTORS OF BROWN against DRUMMOND.

IN a registration at the instance of the Executors of James Brown against Mr John Drummond, for registration of an obligation granted by him, whereby he was obliged to pay to the defunct 600 merks, and to his wife, and to the longest liver of them two, and to their heirs, at the term contained in the bond, and failing thereof, to pay ten merks for each hundred thereof to the longest liver of them, and their foresaids, as well not infest as infest, ay and while the repayment, the heir of the defunct compearing, *alleged*, that this sum being heritable, viz. bearing to pay annualrent, pertained to him, and so could not belong to the executor. This allegiance was repelled, and the sum found to pertain to the executor, notwithstanding of the heritable clause, because the husband died before the term of payment, at the which the heritable clause could only take beginning, and so the sum would fall under his testament, and

No 70.

A bond, payable at a certain term, to a husband and wife, and their heirs, with annualrent after that term, found to be moveable before it fell due, as in the case above.

No 70.

therefore did not pertain to the heir ; neither were the Lords moved with that allegiance made for the heir, viz. that albeit the husband died before the term of payment, yet his wife who was also creditrix, and had her liferent by the bond of the foresaid sum, lived after the term, and was yet on life, which was not respected, seeing the sum was found to come under the husband's testament, and the wife would have her own part of the principal sum, so much as of the law would fall to her. In this it occurs to be considered, who can have right to the annualrent since the husband's decease, there being many terms since, for the executor cannot claim it, as is alleged.

Act. ———.

Alt. *Hart.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 370. Durie, p. 251.*1628. *January 15.**FALCONER against BEATIE.*

No 71.

A SUM in a bond being payable at the first term after the decease of the creditor's mother, with annualrent after the term of payment, found heritable so as to go to the creditor's heirs, he dying before the term of payment.

Fol. Dic. v. 1. p. 370. Durie.

* * See this case No 34. p. 5465. — The contrary ; *Simson against White*, 20th March 1633, No 34. p. 698.

1629. *February 26.**DOUGLAS against M'MICHAEL.*

No 72.

A BOND made at Whitsunday 1627, of this tenor, to be paid at Martinmas 1627, with the annualrent at ten in the hundred, and failing of payment at that time, to pay L. 100 of penalty, and the annualrent thereafter so long as the principal should be unpaid, was found moveable, the creditor having died before the first term of payment, viz. Martinmas 1627, although it was *contended* it should be heritable, in respect of the express obligation of payment of annualrent from the beginning, and ever after till the payment of the principal sum.

Fol. Dic. v. 1. p. 370. Spottiswood, (CONTRACTS.) p. 66.

* * Durie reports the same case :

IN an action for delivery of a bond made to the creditor, which bore, the debtor to be obliged to pay the principal sum borrowed by him at the term contained in the bond, and also the annualrent thereof from the term of lend-