

1739. *November 6.*

Competition betwixt the HEIRS and EXECUTORS of SIR JAMES ROCHEAD.

In a competition betwixt the heir and executor, with regard to bygone annual-rents due upon heritable bonds, secured by infeftment, which the executor claimed down to the day of the predecessor's death, as due *de die in diem*, the Lords found, That where the annual-rents, by conception of the bond, were made payable at Whitsunday and Martinmas, the same did belong to the heir from the term preceding the predecessor's decease, which in the present case was Martinmas, the predecessor having died 1st May; but they found, That where the conventional terms of paying the annual-rents were Lambmas and Candlemas, the annual-rent due at Candlemas before the predecessor's decease did belong to his executors. The foundation of which last opinion was, That where it is said that the legal, and not the conventional terms, are the rule betwixt heir and executor, the meaning is, that the postponing the legal term by the convention of parties does not deprive the executor of the benefit of the legal term, *dies cedit etsi non venit*; but if, by the convention of parties, the fruits be payable before the legal term, the executor must have the benefit, because there *dies et cedit et venit*; and the case would be the same in a forehand payment of rents of lands.

*Fol. Dic. v. 2. p. 458.*

\* \* This case is reported by Kilkerran, No. 44. p. 15906.

No. 55.  
*Quando dies cedit of annual-rents of heritable bonds?*

1765. *February 13.*

Mr. ROBERT DALRYMPLE *against* SIR ROBERT GORDON.

A Minister having been deposed by a Synod, 28th April 1763, the sentence was affirmed by the General Assembly, 1st June, who declared the parish vacant from the date of their own sentence.

Sir Robert Gordon the patron, refused to pay his share of the Whitsunday stipend 1763, upon the ground that the deposition took place from the date of the sentence of the Synod, which was prior to Whitsunday; and quoted Lord Bankton, II. 8, 220, and 227. to show that the sentence of the Assembly must draw back to that period.

The Lords decerned for the stipend in question, and found Sir Robert liable in expenses."

*Act. Dav. Dalrymple.*

*Alt. Lockhart.*

G. F.

*Fac. Coll. No. 1. p. 193.*

No. 56.  
*Deposition of a Minister by a Synod, affirmed by the Assembly, found to take effect only from the date of the sentence of the Assembly.*

1789. *June 19.* EARL of DALHOUSIE *against* SAMUEL GILMOUR.

Gilmour, in consideration of a sum of money, granted bond "to Dr. Thomas Glen and his heirs, for an annuity or yearly payment of £.32 Sterling, at the two terms of Whitsunday and Martinmas, by equal portions, beginning the

No. 57.  
*An annuity by a bond granted for a price, being payable at*