

at the dissolution thereof, by the death of the husband, or in case of their decease without heirs, as aforesaid, so that the succession to the lands and estate above disposed, shall devolve on the husband, his heirs or assignees, then, and in that event, the heirs or assignees of the said husband, succeeding to the said lands and estate, shall be obliged, at the first term of Whitsunday or Martinmas next ensuing his death, to pay all the just and lawful debts due, or that shall happen to be due by him or his said spouse, and to free and relieve her, and the lands to be liferented by her, in the event foresaid, of the samen."

The marriage dissolved by the death of the husband, leaving children, and his creditors adjudged the wife's heritage; and the question was, Whether they could affect her reserved liferent? Lord Auchinleck was of opinion that her liferent could be no more affected than if she had reserved a part of the estate, and given the rest to her husband, subject to the burthen of his debts; and with him agreed a majority of the Court, though the rest of the Lords thought the decision very dangerous.

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1795. February 27. PHILIP *against* CURRIE.

[*Fac. Coll.* IV, p. 204; Tait, "*Heritable*," &c.]

THIS case was stated 6th current, and this day the Lords decided this abstract point, that a bond, though bearing annualrent from the date, is not heritable till the term of payment of the annualrent. The Court was unanimous in this judgment, on account of the former decisions, both ancient and modern, particularly one decision in the year 1748, in the case of *Craig*, observed by Falconer; though all the Lords declared their opinion, that, according to principles, it ought to be otherwise, because, as soon as the subject begins to bear fruits, it becomes a *feodum pecuniæ*, and therefore heritable. But there may be thus much said for the ancient practice, that as money is not of its nature an heritable subject, like lands, which is a *feodum* whether it bears fruits or not, and as it is only the bearing of fruits which makes it heritable, to ascertain that, our ancestors required that it should actually have borne, as it were, one crop of the fruits, before it becomes heritable,—Lord Pitfour observed, that, by the ancient style of such bonds, they only bore annualrent by way of penalty, being payable at a certain term, and, failing of payment at that term, with the interest from and after that term. He said also that he had seen heritable bonds which contained only a personal obligation to pay the money at a certain term, and, failing the payment, then to grant an annualrent right. In both these cases the bond was not heritable till the term of payment; and this possibly may have given rise to the practice of making such bonds not heritable till the term of payment.

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