

No 34. this excipient, who remained debtor; albeit he contended, that Crichton's assignee, in respect of his back-bond preceding, could not have right to seek the sum; which was repelled by the LORDS. See JUS TERTII.

Act. Falconer.

Alt. ———.

Clerk, Scot.

Fol. Dic. v. I. p. 368. Durie, p. 319. & 326.

No 35. 1630. July 30. CARNOUSIE against MELDRUM.

A BOND bearing annualrent, though without clause of infeftment, is heritable, and prestable by the heir of the debtor.

Fol. Dic. v. I. p. 368. Durie.

*** See this case, No 8. p. 5294.

SECT. VII.

Rights having *tractum futuri temporis*.

No 36. 1624. February 18. COULTER against FORBES.

A GIFT of liferent escheat falls to the heir of the donatar, and not to his executors, as to bygones.

Fol. Dic. v. I. p. 368. Durie.

*** See this case No 26. p. 5460.

No 37. Bonds bearing to pay annualrent after the term, but without any clause of infeftment, were found to be heritable.

1626. March 26. CAUSTON against STUART, and WYLIE's Bairns against HAY.

THERE were two actions before the Lords, one betwixt Causton and Stuart, and the other betwixt the Bairns of Alexander Wylie, and Sir John Scot their tutor, against Hay, and the Laird of Grant, wherein the defenders being convened for registration of bonds and obligations for sums of money; which bonds bore, 'to pay annualrent after the term of the bond,' but no clause proporting

infestment, nor obligation to give infestment, neither to pay, as well not infest as infest, but simply bearing, to pay ten for each hundred yearly, after the terms of payment; these bonds were found to be heritable, and to pertain to the heir of the creditor; and the action therefore was sustained at the instance of the heirs of the defuncts to whom the bonds were given, and the same were found to be heritable, and not to be moveable, and consequently that the executors of the defuncts had no right thereto. And in the foresaid process of Causton, the bond was desired to be registrated at the instance of the heir of the creditor, which was sustained, because it was heritable, as said is, and against the executors to the debtor, maker of the bond, which the LORDS also sustained, and found, that albeit the bond was heritable, yet the executors might be convened for registration of the same against them, and that execution might follow against them for payment of the principal sum to the heir at his instance; and also, that they might be convened at the instance of the executors of the creditors deceased, for all the byruns resting owing preceding the said creditors' decease; which was so found, because the bonds contained no clause concerning any infestment to be given for the said annualrent, which, if it had borne, then it behoved to have been sought to have been fulfilled by the heir of the debtor; but bearing, as said is, only to pay annual, and that the creditor might charge for his principal sum, it was found to be a fact prestable by the executors of the debtor. But, in this process, the Lords were of the mind, that if the pursuer should seek payment of the annualrent from the executors of the debtor, for any terms after the defunct's decease, and before he should seek the principal sum, and charge the executors for the principal sum, whereby it might become moveable, and so prestable by the executors, that in that case, viz. where the executors are not charged for the principal sum, but only to pay the annual, according to the bond, for terms, as they should yearly thereafter run and fall out to be owing, and the principal sum remaining in the mean time heritable and not sought, that *hoc casu* the executors could not be found addebted in these annuals, but the same should be craved from the heir; but this point was not decided, for it was not drawn in question *hoc loco*.

In Causton's Process, Act. *Oliphant*.

Clerk, *Hay*.

In the other Process, Act. *Cuninghame*.

Alt. *Belsbes*.

Clerk, *Scot*.

Durie, p. 200.

1627. June 29.

DRYSDALE against CRAWFORD.

JAMES DRYSDALE, executor confirmed to Janet Drysdale his sister, convened Henry Crawford for registration of a bond made by him to Janet. *Alleged*, That the bond was heritable, and so pertained to the heir. *Answered*, He is the only person who could be heir, and being executor had the only right to the

No 38.