

charge the annualrents of the said 10,000 merks due before the Bishop's decease, as in *bonis ejus*.

Alleged for the defender, The Lady Prestonhall his mother, who was *nominatim* substituted in the bond *quoad* the annualrents, had as good right to those resting before the Archbishop's death unuplifted by him, as to what fell due thereafter; the former being transmitted to her without necessity of a service, 4th Feb. 1680, Robertson *contra* Preston, *voce* SERVICE AND CONFIRMATION, 13th July 1681, (*See* Christie against Christie, *voce* LEGITIM).

Answered for the pursuer, Though persons *nominatim* substituted in bonds need no service or confirmation to transmit the bonds to them; yet all substitutions take place only from the institute's decease, and carry the stock and profits thereof; for the precedent profits being in *bonis defuncti*, who was sole proprietor thereof, go by succession to him.

THE LORDS found, That the annualrents which did precede the Bishop's decease, were in *bonis ejus*.

Fol. Dic. v. I. p. 367. Forbes, p. 491.

No 31.
death, found to be in *bonis defuncti*, and not to be carried by the substitution.

S E C T. VI.

Bonds with Clauses for Annualrent, before the act 1661.

1610. December 8. LAWSON against PATERSON.

No 32.

A bond ordaining ten merks of annualrent to be yearly paid for ilk hundred of a sum, so long as the principal is not paid, will not make the bond heritable and the sum immoveable, unless the bond contain provision of infeftment, or to pay as well not infeft as infeft.

Fol. Dic. v. I. p. 367. Haddington, MS. No 2048.

1627. December 7. PORTEOUS against VEITCH and HAY.

No 33.

IN a suspension betwixt Porteous and Veitch and Hay anent the employment of a sum to the use of the relict, who was appointed by her umquhile husband, to be provided to her liferent thereof, the LORDS found, That the heir, who was only charged in this process, would get his relief against the executors, upon the moveable gear of the defunct, who was obliged, and that the executor would be obliged to give monies to be employed; and that facts of that

A bond bearing a sum to be paid at a term, and a certain sum of annualrent from the time of borrowing to the time of pay-

No 33.
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nualrent
thereafter,
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nature, viz. for employment upon annualrent yearly, were prestable by executors. It is here to be considered, when such sums are employed by executors to the use of liferenters, to whom the same shall pertain, after the liferenter's decease, whether to the heir of the defunct, being obliged to employ the same to the relict for her liferent, and to his heirs thereafter, or to the executors, the sum being first moveable, and so which should have pertained to them; and if the executors, by the said employment, be for ever excluded from all right thereto, as it appears they are. In this process also the LORDS found, That a bond bearing a sum to be paid at the term therein contained, with so much for the annualrent thereof from the time of the borrowing to the time of payment; and bearing no other clause of payment of annualrent thereafter, not to be an heritable bond, but to be moveable, and to pertain to the executors, and to come under testament.

December 13.—IN a suspension betwixt Veitch and Hay, the relict having charged the heir to her husband to employ a sum to her in liferent, conform to her husband's bond to that effect, as is noted here, 7th December 1627, the heir alleging that the husband having in his lifetime employed a greater sum to himself, and to the charger his wife in liferent; and since his decease, she and the executor uplifting the same, albeit the same was a moveable bond, yet seeing she had uplifted as much as this sum, which she now craves to be employed, she being so full handed, she cannot come upon the heir, but ought to make that, wherewith she hath intromitted herself, furthcoming for the employment craved by her against the heir, this reason was sustained, and the LORDS found, That the relict and the executor having uplifted as much of a moveable bond as would serve for the employment craved, that it should be applied by the relict for satisfying the employment acclaimed, seeing the heir would have his relief thereof against the executors, albeit sentence were given against the heir in favour of the relict; which sentence the LORDS found ought not to pass against him, and to put him thereafter to seek his relief against the executor, seeing herself was full handed, as said is, of as much as this would extend to, which is now acclaimed; and if she sustained any prejudice, as that the employment foresaid hereby came off her own half of the moveables, which befel to her by her husband's decease, whereas the said employment should come off the whole moveables, and not off her half allenary;—THE LORDS found, That the relict might have her recourse against the executors, that the said employment might be made of the whole moveables, and not of the relict's half intromitted with by her allenary.

Act. Hope & Stuart.

Alt. Burnet & Nicolson.

Clerk, Scot.

Fol. Dic. v. 1. p. 366. Durie, p. 319. £ 321.