

ing to the said repayment, (for, by the act of Parliament, annualrent could not be taken in hand, but only at the term of payment of the principal sum), and in case of failzie, to pay a certain penalty, together also with the annualrent, ay and while the sum should be repaid; and the creditor dying before the term of payment in the bond, and the obligation being sought to be delivered to the heir of the defunct, the executors alleging that it pertained to them, and not to the heir; the LORDS found the bond pertained to the executors, and not to the heir, albeit it bore payment of the annualrent *ab initio*, and was of the tenor foresaid, the creditor having deceast before the term of payment, whose surviving after the term, and not the clause of paying annualrent for that intervening term, betwixt the term of lending, and the repayment, should only have made the bond to pertain to the heir.

No 72.

Clerk, *Hay*.*Durie*, p. 430.1630. July 30. CARNOUSIE *against* MELDRUM.

A BOND heritable by a clause for annualrent, to commence at the term of payment of the bond, is moveable if the debtor die before the term of payment, and his executors are ultimately liable.

No 73.

Fol. Dic. v. I. p. 370. Durie. Spottiswood.

* * See this case No 8. p. 5204.

1666. July 31. SIR LODOVICK GORDON *against* SIR JOHN KEITH.

SIR LODOVICK GORDON being assigned to a sum due to Sir Robert Farquhar by Sir John Keith, pursues Sir John for payment, who *alleged* absolvitor, because he had right to the sum himself, as donatar to Sir Robert's escheat, and that the sum was moveable, albeit it bare annualrent, in so far as the term of payment was not come. It was *answered*, That sums were heritable as to the fisk, by the clause of annualrent, and the only exception was, that if the term of payment of the annualrent was not come, the same was moveable; and nothing in relation to the term of payment, if the annualrent was come due before the rebellion.

No 74.

A donatar claimed a sum as moveable, because the term of payment of annualrent had not arrived. Found to be heritable as to the fisk.

THE LORDS found, that the coming of the term of payment of the annualrents made the sum to become heritable as to the fisk, and therefore repelled the donatar's defence.

Stair, v. I. p. 403.