

No. 43. The Lords found, That Cadboll having survived Martinmas 1719, the legal term for payment of the rents by the tenants, he was liable for his share of the tack-duty that year; and therefore found the defender liable for the half of the profits for that year.

Act. *Ja. Graham, senior.* Alt. *Jo. Forbes.* Reporter, *Lord Cullen.* Clerk, *Mackenzie.*
Edgar, p. 164.

1739. November 6.

MURRAY KYNNYNMOUND *against* CATHCART and MRS. ELIZABETH ROCHEID.

No. 44.

Annual-rents upon heritable bonds, due at the legal terms, unless the term be anticipated.

It was in this case found, that annual-rents upon an heritable bond are not due *de die in diem*, as in moveable bonds, but that the same fall due in like manner as rents of lands; and therefore, where, by an heritable bond, the annual-rents were payable at Whitsunday and Martinmas, the creditor dying upon the first day of May, his heir was found to have right to the annual-rents from and after the Martinmas preceding.

Nevertheless, it was also found, that in such of the heritable bonds, wherein the conventional terms of payment were not Whitsunday and Martinmas, but Lambmas and Candlemas, the creditor, as said is, dying upon the first day of May, the heir was only to have right to the annual-rents from and after the Candlemas preceding, and that the annual-rents due at the Candlemas did belong to the executors.

The reason of the difference was this: In the former case, the legal and conventional terms were the same, but here, by the conventional terms, the annual-rents are payable before the legal term; and the meaning of the common maxim, that the legal and not the conventional terms are the rule between heir and executor, is no other than this, that the postponing the legal term by the convention of parties, which generally is the case of tenants' rents, does not deprive the executor of the benefit of the legal term. But if, by the convention of parties, annual-rents, for example, be made payable before the legal term, the executors will have the benefit of that convention; and the case would be the same in a forehand payment of rents of lands, for there is no instance of what is both due and exigible not going to executors. *Vide* HERITABLE AND MOVEABLE, *eodem die, inter eosdem*, No. 4. p. 5415. and No. 137. p. 5590.

It was upon the same ground found, February 26, 1740, between the heirs and executors of the Earl of Selkirk in general terms, that the executors had right to the annual-rents of heritable bonds payable at two terms in the year, and that for the half year's annual-rent payable at the conventional term in the bonds, immediately preceding the death of the late Earl of Selkirk; but that the annual-rents since the said last term belonged to the person having right to the principal sum.

Kilkerran, No. 1. p. 563.