

S E C T. XVI.

Price of Heritable Subjects.

1628. February 7. HUME *against* L. RENTON.

IN an action betwixt Hume and L. Renton, wherein the pursuer, as executor confirmed to his father, pursues for payment of the sum of 1000 merks, for the price of some land sold by the pursuer's father to the defender's father, with the yearly annualrent thereof since the pursuer's decease; which pursuit, both for principal and annualrent, the LORDS sustained at the instance of the executor; albeit it was alleged, that if any annualrent should be paid, it was only competent to be sought by the heir of the defunct, and not by the executor, who could not have right to seek annualrent, but only the principal sum; and also alleged, that neither heir nor executor could seek annualrent for that sum, seeing by the contract the defunct was only obliged to pay the principal, and was not obliged in any annualrent; which allegiances were repelled, for the LORDS found, seeing the defender possessed the land, he ought also to pay the annualrent for the price thereof, so long as he retained it unpaid; and seeing the executor had right to the principal, the LORDS found, that no other could have right to the annualrent thereof, but that it was due to him.

Act. —.

Alt. *Belsbes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 371. Durie, p. 340.*1680. July 7. WAUGH *against* JAMIESON and LERMONT.

EUPHEMIA MONEYPENNY being infest in an annualrent in the estate of Balmorie, she disposed the same to Mr John Smith, her husband, who was never infest. After his death, she and Mr John Smith, who was heir retoured to Mr John his father, entered in a contract with Mr Robert Lermont, whereby they disposed to him this annualrent, and he is obliged to pay therefor 4000 merks. Mr John, by his testament, leaves a legacy to Thomas Waugh's daughter, which being assigned to her father, he pursues Mr Robert Lermont for payment of the sum contained in the contract. Dr Jamieson having caused adjudge this annualrent from himself as apparent heir to Mr John Smith elder and younger, and having obtained right to the adjudication, compares for his interest, and *alleges* that the annualrent belongs to him, and in place thereof, the sum due by Mr Robert Lermont; and it cannot belong to an executor or legatar, be-

No 88.

A bond given for the price of lands, falls to the executor; and the annualrent which the Lords allow therefor, tho' not expressly stipulated, belongs also to him, and not to the heir.

No 89.

A party sold an infestment of annualrent, and the minute of sale contained a clause, that upon not payment of the annualrent for two years, the contract should be void. The price was found to belong to the seller's executor, and