

1630. *March 10.* DR. LINDSAY *against* JAMES HERIOT.

No. 11.

If a creditor die before the term of Whitsunday or Martinmas, the bond being heritable, that subsequent term's annual-rent will pertain to him who shall have right to the principal sum, and not to his executors; because the annual-rent was never the defunct's, it not having been due to be paid before the term, although it was running at the time of the defunct's decease.

*Spottiswood, p. 12.*

\* \* Durie's report of this case is No. 123. p. 5569. *voce* HERITABLE AND MOVEABLE.

1630. *June 24.* SCRIMZEOUR *against* L. DEAN-MILN.

No. 12.

One Scrimzeour executor confirmed to the goodman of Kirkton, who had an liferent pension of certain victual, to be paid out of the the teind-sheaves of ———, pursues the goodman of Dean-miln for payment of the said pension the crop 1629, the teind-sheaves being intromitted with by him the said year, by virtue of a right thereof made to him by the titular: and the executor claiming right to the pension that year, seeing the pensioner died in June, that same crop, whereby at least (as he alleged) the half year's duty of the pension should be paid to him, seeing he lived a while after Whitsunday; wherein the Lords found, that seeing the pensioner lived not till after the corns were shorn that crop, but died before the harvest libelled, the same was appointed to be paid out of the teind-sheaves of the lands libelled, that therefore the said teind-sheaves could not be affected with the burden of the pension that year, and so the pensioner, who had it for his lifetime, dying as said is before the harvest, albeit after Whitsunday, and consequently his executor was found to have no right thereto, albeit he alleged that it was a debt which was running, *ubi cedebat dies, licet non venerat* when he died, which was repelled.

*Act. Magill.*

*Alt. Aiton.*

*Clerk, Gibson.*

*Durie, p. 521.*

1631. *February 1.* L. BLAUS *against* WINRAHAM.

No. 13.

The heritor pursuing after the liferenter's decease, who died shortly after Whitsunday, for the other half of that year's duty, wherein the liferenter died (for the Whitsunday's term pertained to her executors, she surviving Whitsunday) viz. for the quantities libelled, whereto the half of the third sheaf extended, seeing the land was let for the third sheaf, which was all uplifted by Helen Winraham, re-

In questions arising between the executors of a liferentrix and the fiar, the fiar draws

No. 13.  
 what, in the  
 common case,  
 the heir  
 would draw.

lict of umquhile Mr. George Butler, and she was pursued for the equal half thereof; who alleging that umquhile Mr. Robert Winraham, her brother, comprised the liferenter's right, and thereafter let tacks to her husband, for payment of 40 pounds yearly, and she uplifting the duties in name of the tacks-man, her husband's apparent heir, she cannot be convened for payment of any greater duty this year, wherein the liferenter died, than the equal half of the tack-duty, no more than if the liferenter had let the tack to the actual labourer of the ground for this duty, *quo casu* the tenant could not be convened for any more: And the pursuer replying, that this tack let betwixt good-brethren, could not prejudice the heritor after the liferenter's decease, to seek the equal half of that year's duty, which justly befel to the heritor, seeing the liferenter died within ten days after Whitsunday, whereby she could have no right but to the equal half; and so she could let no tack, which could have any longer endurance than for that half year; and consequently the compriser of her liferent could set no longer than herself, especially this tack not being let to the tenant of the ground, (whose case might possibly be favourable) but being let to a third person, who is convened only for the just half of that which was actually uplifted from the tenant possessor; and it was no ways reasonable that a stranger should reap the whole year's duty from the tenant, and that the heritor should be excluded by such a similar tack, containing no duty but this imaginary duty, which makes the tack null in law, for " *Conductio quæ est in uno nummo est nulla, quia hoc donationis instar inducit, L. 46. D. Locati & L. Si quis ante § 2. Si quis D De acquirenda, vel amittenda possessionè, ubi vid. Bart. De differentia inter locationem, quæ fit voluntarie, & eam quæ fit ex necessitate, de qua loquitur, L. Si usufructus. D. De jure dotium :*" The Lords found, that the tack let by the life-renter, and by the compriser of her life-rent which was found alike, was sufficient to exclude the heritors pursuit, for any more or greater duty to be paid to him, for these lands, of this term controverted, except the half of the tack-duty; the half of the which tack-duty the Lords found should suffice for the said term, albeit the life-renter died so soon after the term of Whitsunday, and before Martinmas, which was the term controverted; and found, that the duties of the land that term pertained to the tacks man, albeit the tack was not let to the tenant, labourer of the ground. This tack was also sustained, to defend against the summary removing, intended after the life-renter's decease, ay and while warning were made.

Act. Nicholson.

Alt. Stuart.

Clerk Gibson.

*Durie, p. 563.*

This action being called the 25th February 1631, this same decision was *de novo* voted and allowed, *me reclamante*, whereby it follows, that the tacks-man to the liferenter must also bruik the next year, in respect of the 26th act of the 3d Parl. Ja. 4. which prohibits removing till the next Whitsunday, at which also the heritor will only get the tack-duty, and no more.