

should no ways prejudice the person substitute ; but here the creditor died before the term.

No 11.

Act. *Lermonth.*

Alt. ———.

Clerk, *Scot.**Fol. Dic. v. I. p. 385. Durie, p. 481.*

* * * Kerse reports the same case :

BOND to a father, and failing of him by decease, to his son, albeit the father died *ante terminum*, found sufficient to exclude the relict from the third of that bond.

Kerse, MS. fol. 65.

1663. June 24. SCRIMGGEOR *against* MURRAY.

No 12.

A BOND bearing annualrent and obligation to infest falls not *sub communionem*, nor will the relict have any part thereof.

Fol. Dic. v. I. p. 385. Stair.

* * * See this case, No 7. p. 464.

1665. June 28. JAMES PITCAIRN *against* ISOBEL EDGAR.

UMQUHILE David Edgar, by his contract of marriage, provided 4000 merks to be paid by him and his heir of the first marriage, which failing, any other his heirs, to the bairns of the second marriage ;—the portion of the daughters payable at their age of 18, and the sons at 21, with five merks yearly of annualrent after his death, for the children's subsistence. Isobel, one of the children, having married after her father's death, James Pitcairn, her husband's creditor, pursues for the sum as belonging to the husband *jure mariti*. It was *answered*, That the sum was heritable, bearing annualrent, and the term of payment of the annualrent was come before the marriage, and therefore it did not belong to the husband *jure mariti*. It was *answered*, That it was not properly an annualrent, but an aliment of five per cent. and that the term of payment of the annualrent was after the act of Parliament 1641, declaring such bonds moveable ; and albeit the fisk and relict be there excluded, yet the *jus mariti* is not, but is only added by the act 1661.

THE LORDS found, that seeing this provision bears annualrent, whether more or less, and that the marriage was after the term of payment, that it was heritable, and fell not to the husband *jure mariti*, but only the annualrents thereof.

No 13.
Bond bearing
annualrent
falls not un-
der the *jus*
mariti.