

1682. December 20. RAMSAY against RAMSAY.

No 75.

THE term of payment of annualrent, and not of the principal sum, regulates a bond as to the quality of heritable or moveable, when the creditor dies *ante terminum*.

*Fol. Dic. v. 1. p. 370. Harcarse. Fountainball.*

\* \* \* See this case No 28. p. 4234.

1748. November 22. ANNE MEUSE against The EXECUTORS of CRAIG.

No 76.  
Where the creditor in a personal bond, which bears annualrent from the date, dies before the term of payment, the bond is moveable.

IT being controverted between Anne Meuse, relict of Captain William Craig and his executors, Whether or not a personal bond granted to the defunct, and bearing annualrent from its date, but whereof the first term's payment of the annualrent was not come at his death, was moveable, and fell under the *jus relictæ*, or if it was heritable *quoad fiscum et relictam*; the ORDINARY found, "That neither the principal sum, nor the first term's annualrent contained in the bond, having become payable at the Captain's death, the bond fell under the *jus relictæ*;" and the LORDS "adhered."

Some of the Lords were indeed moved by an observation made for the executors, that most of the decisions in this case referred to for the relict were in the case where the bond did not bear annualrent from its date, but from and after the term of payment of the principal upon failure of payment at the term, and from the words of the act 1661; but the COURT was, by a great plurality, clear in the judgment given.

For as to decisions, though when upon the reformation, and the Canon Law losing its authority with us, personal bonds with clauses of annualrent, came first in use, the Lords were uncertain in their decisions, as Hope observes in his *Minor Practiques*, § 103, sometimes judging no bonds to be heritable, but what bore a clause to infest, at other times finding a bond to be heritable, though without a clause of infestment, if it bore a clause to pay annualrent to the creditor, as well infest as not infest; yet at last, says he, they came to find bonds heritable, although wanting both clauses, if they bore an obligation to pay annualrent. Nevertheless, where the creditor died before the first term's payment of the annualrent, they were still held moveable, and that not only in the case where the bond bore annualrent only after the term of payment, which it is true is the case of many of the decisions, but also where the bond bore annualrent from its date, Douglas *contra* M'Mitchel and Others, No 72. p. 5504. For they seem to have presumed where one lent money payable at a certain term, the intention of the lender to be, to have his money repaid at that term; and as for that end the debtor was supposed to have the money