1711. *January* 16.

MR HUGH GRAY, Son to the deceased MR HUGH GRAY of Dalduff, *against* HUGH CAIRNCROSS of Hilslop.

No 30.
A bond payable to one, and failing him by decease, to a blank person, his heirs, executors, or assignees, upon which, though it bore a precept of sasine, the creditor never took infeftment, but by his testament ordered his son's name to be inserted in the blank, found to be heritable and not altered in its nature by the testament.

IN an action at the instance of Mr Hugh Gray against Hugh Cairncross, for payment of the bygone annualrents of 2000 merks, contained in a bond granted by Walter Cairncross the defender's father, payable to Mr Hugh Gray of Dalduff, the pursuer's father; and failing of him by decease, to ——— substitute, his heirs, executors, or assignees; upon which bond, though it bore a precept of sasine, old Mr Hugh did never take infeftment, but by his testament ordered his third son Thomas's name to be inserted in the blank, and assigned the bygone annualrents to him, the LORDS found, That the bond is heritably conceived, and that the nature thereof was not altered by the testament; albeit it was *alleged* for the defender, That *utcunque* bonds with a precept of sasine payable to heirs or assignees, or secluding executors, are considered as heritable, though no infeftment follow thereon, from the creditor's presumed intention to have his money secured by infeftment; yet that presumption ceaseth in this case, where he hath testified his inclination to the contrary, 1*mo*, By taking the bond payable to heirs, executors, and assignees; 2*do*, By neglecting to take sasine; 3*tio*, By disposing upon the principal sum by a testamentary deed, which is a more direct indication of the testator's mind to have the bond moveable, than if he had caused charge for payment. Again, though a bond containing a precept of sasine is presumed to be heritable, from the supposed will of the creditor, which doth not appear in this case, it is not simply so; in so far as, albeit inhibition secures against the alienation of any heritable subject, to the prejudice of the debt for which it was used, it doth not hinder the creditor in a bond containing precept of sasine, to dispose thereof at any time before taking infeftment, 31st December 1703, Oliphant *contra* Irving. Sec. 19. *h. t.* *Forbes, p.* 476.

1711. *January* 26.

The LORD ELIBANK *against* ALEXANDER M'KENZIE of Frazerdale.

No 31.
Annualrents of a sum payable to one, he being in life, and failing him by decease, to another, resting unuplifted before the institute's

THE Lord Prestonhall having by his bond obliged himself to pay the annualrent of 10,000 merks yearly and termly to Alexander, Archbishop of St Andrew's, his father-in-law, he being on life; and failing of him by decease, to Mary Burnet his second daughter, the Lady Prestonhall, during all the days of her lifetime, and after her decease, to George M'Kenzie her son, in the action of count and reckoning at the instance of the Lord Elibank against Alexander M'Kenzie of Frazerdale, No 35. p. 3500. the pursuer craved to add to his