

1627. December 12. FALCONER against HEIRS of BEATIE.

IN the action of Falconer and Beatie, whereof mention is made, No 52. p. 4501. the LORDS found the obligation therein mentioned, whereby the debtor was obliged to pay ten merks for ilk 100 merks, with the principal sum at the term of payment in the said obligation, to be an heritable bond, albeit it bore no clause of infestment; and also found, That an assignation made by the creditor of that bond, altered not the nature thereof, to make the same; and sum therein contained, to become moveable, in the person of the assignee, by making of the said assignation; but found it remained still heritable in the person of the assignee, the bond being of the tenor foresaid.

January 15. 1628.—IN a registration by Falconer *contra* Beatie, whereof mention is made 12th December 1627; umquhile Robert Beatie is obliged to pay to Andrew Wilson 1000 merks at the first term after the decease of the said Andrew Wilson's mother. The said Andrew makes George Crichton assignee thereto, and after the said George's decease, the Laird of Ruthven is served heir to the said George Crichton; and makes John Falconer assignee to the same, who pursues William Beatie as heir to the said umquhile Robert, for registration of the said obligation. The tenor of the bond was to pay the sum, as said is, after the decease of the cedent's mother, and to pay annualrent therefor for all terms thereafter, ay and while the sum was re-paid.—The defender *alleged*, That this bond could not be registrated at the instance of the assignee made by George Crichton's heir; because George dying before the term of payment, viz. before Andrew Wilson's mother, who was yet living, and the term of payment being conferred to the first term after her decease, so that the said George dying before the term, albeit the bond being of the nature of an heritable bond, seeing it bears annualrent, yet seeing it took not effect in the cedent's lifetime, to become heritable for the cause foresaid, of his decease before the term, he *alleged* that the bond and sum therein contained, pertained to the executors of the said umquhile George, and could not pertain to his heir, nor to any assignee made by the heir. This allegiance was repelled by the LORDS, and the bond found to pertain to the heir of the said George. And it being further *alleged*, that the said umquhile George obliged himself to the said Andrew, the time of the said assignation made to him, that if he had died before the said Andrew, that the money should return again to the said Andrew; and the said Andrew being yet in life, and George dead, no other having right from George could pursue therefor, this allegiance was also repelled, seeing the defender neither *alleged* that he had right from Andrew, nor had made payment to him, without which this particular bond was but personal, and would produce action to Wilson against Crichton only; but would not serve to liberate

No 34.

A bond bearing an obligation to pay ten merks for each hundred, with the principal sum at the term of payment, found to be heritable, though it bore no clause of infestment; and that an assignation of it by the creditor did not render it moveable.

No 34. this excipient, who remained debtor; albeit he contended, that Crichton's assignee, in respect of his back-bond preceding, could not have right to seek the sum; which was repelled by the LORDS. See JUS TERTII.

Act. Falconer.

Alt. ———.

Clerk, Scot.

Fol. Dic. v. I. p. 368. Durie, p. 319. & 326.

No 35. 1630. July 30. CARNOUSIE against MELDRUM.

A BOND bearing annualrent, though without clause of infeftment, is heritable, and prestable by the heir of the debtor.

Fol. Dic. v. I. p. 368. Durie.

*** See this case, No 8. p. 5294.

SECT. VII.

Rights having *tractum futuri temporis*.

No 36. 1624. February 18. COULTER against FORBES.

A GIFT of liferent escheat falls to the heir of the donatar, and not to his executors, as to bygones.

Fol. Dic. v. I. p. 368. Durie.

*** See this case No 26. p. 5460.

No 37. Bonds bearing to pay annualrent after the term, but without any clause of infeftment, were found to be heritable.

1626. March 26. CAUSTON against STUART, and WYLIE's Bairns against HAY.

THERE were two actions before the Lords, one betwixt Causton and Stuart, and the other betwixt the Bairns of Alexander Wylie, and Sir John Scot their tutor, against Hay, and the Laird of Grant, wherein the defenders being convened for registration of bonds and obligations for sums of money; which bonds bore, 'to pay annualrent after the term of the bond,' but no clause proporting