

S E C T. XIII.

Effect of the death of debtor or creditor before the term of payment,
in cases of bonds heritable by clause of infeftment.

1615. February 7. NASMITH *against* LORD HAY.

IN an action pursued by Henry Nasmith heir to John Nasmith *contra* my Lord Hay, to hear and see a bond of 24,000 merks made to the said John by the said Lord Hay, which was registrated in his own time, to be transferred, the LORDS fand that the bond could not fall to the heir, because before the term of payment, which was Whitsunday 1614. John Nasmith died; and that notwithstanding the said bond bore an heritable clause, viz. in case of payment to infeft the said John in an annualrent of 24,000 merks.

Fol. Dic. v. 1. p. 370. Kerse, MS. fol. 132.

No 77.
An heritable bond by a clause obliging the debtor to infeft his creditor in case of payment at the term, found to belong to the creditor's executors, he dying before the term of payment.

1623. July 15. ANDERSON *against* ANDERSON.

IN an action, Anderson *contra* Anderson, for delivery of writs and obligations to the pursuer, as heir to the defunct, to whom the obligation was made, THE LORDS found, that an obligation made upon borrowed money, to be paid at a term, before which term of payment the creditor died, remained an heritable bond, and ought to be delivered as pertaining to the heir of the defunct, and not to his executors, because the same contained a clause therein, whereby the debtor was obliged by the bond to give a present infeftment of annualrent to the creditor at the time of the bond; which clause not being conferred to be done, in case of failzie of payment of the principal sum, at the term appointed, but the debtor being obliged in the mean time, before the term, to give the said infeftment, albeit no infeftment followed, yet the bond thereby remained heritable. This appears to disagree a little from a decision, Wallace *contra* MacDougal, whereof mention is made, February 12th 1623, *voce* HUSBAND AND WIFE; except that in this case the clause to give infeftment is not put off till failzie of payment, but presently to be taken.

No 78.
Found that a bond for borrowed money, to be paid at a term, before which the creditor died, remained heritable, because it contained a clause obliging to give immediate infeftment.

Act. Nicolson, jun.

Alt. Nicolson, sen.

Clerk, Gibson.

Durie, p. 73.