

No 70.

therefore did not pertain to the heir ; neither were the Lords moved with that allegiance made for the heir, viz. that albeit the husband died before the term of payment, yet his wife who was also creditrix, and had her life rent by the bond of the foresaid sum, lived after the term, and was yet on life, which was not respected, seeing the sum was found to come under the husband's testament, and the wife would have her own part of the principal sum, so much as of the law would fall to her. In this it occurs to be considered, who can have right to the annual rent since the husband's decease, there being many terms since, for the executor cannot claim it, as is alleged.

Act. ———.

Alt. *Hart.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 370. Durie, p. 251.*1628. *January 15.**FALCONER against BEATIE.*

No 71.

A SUM in a bond being payable at the first term after the decease of the creditor's mother, with annual rent after the term of payment, found heritable so as to go to the creditor's heirs, he dying before the term of payment.

Fol. Dic. v. 1. p. 370. Durie.

* * See this case No 34. p. 5465. — The contrary ; *Simson against White*, 20th March 1633, No 34. p. 698.

1629. *February 26.**DOUGLAS against M'MICHAEL.*

No 72.

A BOND made at Whitsunday 1627, of this tenor, to be paid at Martinmas 1627, with the annual rent at ten in the hundred, and failing of payment at that time, to pay L. 100 of penalty, and the annual rent thereafter so long as the principal should be unpaid, was found moveable, the creditor having died before the first term of payment, viz. Martinmas 1627, although it was *contended* it should be heritable, in respect of the express obligation of payment of annual rent from the beginning, and ever after till the payment of the principal sum.

Fol. Dic. v. 1. p. 370. Spottiswood, (CONTRACTS.) p. 66.

* * Durie reports the same case :

IN an action for delivery of a bond made to the creditor, which bore, the debtor to be obliged to pay the principal sum borrowed by him at the term contained in the bond, and also the annual rent thereof from the term of lend-