

the sum; because of the destination thereof contained in the bond, whereby the father was ordained to be infeft but in liferent, and the son in fee. It was duplied, That, so long as the infeftment was not granted, and the obligation consisted *in nudis finibus*, the father had power to dispoise upon the money as he pleased, it being the price of his own lands wherein his son was not infeft. The Lords found the exception and duply relevant and proven.

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1629. February 20. ELIZABETH WHYTE, and RIPPATH, her Husband, *against* JAMES DOUGLAS'S HEIRS.

ELIZABETH Whyte, relict of umquhile James Douglas, clerk of Duns, and Rippath, her spouse, for his interest, pursue her first husband's heir, to provide her to the annualrents of the heritable bonds during her lifetime, which were made to his father after the marriage, some of them bearing the annualrent to be paid to him and his heirs, as well infeft as not infeft, but bearing no clause whereby the debtor was bound to infeft the creditor's other bonds, bearing only to pay annualrent, aye and while the principal sum be paid. The reason of the pursuit was one clause in the contract of marriage, whereby umquhile James Douglas was obliged to infeft his future spouse and himself in all lands and annualrents that he shall happen to acquire or conquesche during the marriage. It was excepted for the heir, That the clause of the contract could not oblige the contractor to provide her to no other annualrents but those wherein he was either infeft, or, at the farthest, in these bonds, in which the debtors were obliged to infeft him. The Lords found, That the heir should provide [her,] *habili modo*, to all the foresaid heritable bonds which bore annualrent to be paid to him. *Ratio*:—if they had not been heritable, she would have fallen into the third of the sums contained in them.

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1629. February 26. DOUGLAS *against* M<sup>c</sup>MICHELL.

A BOND for payment of a certain sum of money at a certain term, with the annualrent thereof, and, failing in payment thereof at the said term, to pay a penalty; and, after the said term, to pay annualrent, aye and while the principal sum be paid. Before the term of payment, the creditor departs this life. *Quæritur*, Whether this bond be heritable or moveable? The Lords found the bond moveable.

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