

on the consignment, the consigned sum could only belong to Dunbeath's heirs, No 120.
 who only could renounce the wadset, and not to his executor; and therefore
 the defender is not obliged to pay the consigned sum, but may, and doth pass
 from the order.

THE LORDS found the defender not obliged to re-produce the sum, or to in-
 sist in the declarator; and found, that if he did insist, that the sum would fall
 to Dunbeath's heir, and not to his executor, and that it is not in the case of the
 price of land due by a contract, not perfected in the disponent's time, which
 may belong to the disponent's executor, though the disposition must be perfect-
 ed by his heirs, it being by the disponent's own deed, that takes the price as a
 moveable sum, and thereby preferring his executor to his heir.

Stair, v. 2. p. 856.

1712. February 27. SCOT against DUTCHESS of BUCCLEUGH.

No 121.

FOUND that decree did not render an heritable bond moveable, unless a
 charge had followed on it.

Fol. Dic. v. 1. p. 373. Fountainhall.

*** See this case No 16. p. 3362.

S E C T. XXII.

Effect of Requisition.

1626. March 15. JOHN GRAY against WM. GRAHAM.

No 122.

FOUND, that arrestment may be made upon a bond, bearing the common
 clause after infestment, to pay without requisition, both for the principal sum
 and for the annualrents, after the charge continually to the term of payment.

Kerse, MS. fol. 235.

1630. March 10. DR. LINDSAY against TOWN of EDINBURGH.

No 123.
 The Town of
 Edinburgh
 became

THE Town of Edinburgh being debtor by an heritable contract, to umquhile
 Thomas Heriot, in the sum of L. 10,000, to be paid upon requisition at three

No 123.
bound, by an heritable contract, to pay L. 10,000 upon requisition, at three several terms. The creditor made requisition for the first term's payment, but died before the term. Found, that the sum then payable was rendered moveable.

several terms; who having required for the first term's payment, which was against Whitsunday 1629, and he having deceased before the term, the Doctor's wife, sister to the defunct, his executrix, and his brother as heir, contending for that first term's payment, and for the profit of the whole sum, which by the contract was not due to be paid before that Whitsunday, before which the creditor died; the Lords found, that the said sum payable at the first term, viz, 5,000 merks, became moveable by the said requisition made before the term; and in respect thereof, and that the creditor died before the said term, they found, that the same, and so much of the annualrent as effeired to that part of the sum, which was moveable, pertained to the executor of the defunct, and not to his heir; and that the rest of the annualrent of the L. 10,000, albeit the same annualrent was also payable at the said term, before which the creditor died, as said is, was due to the heir, and pertained not to the executor, seeing the defunct survived not the term, at which he might have craved it, and so that his executor could no more seek it than himself; and the rest of the principal sum was found also due to the heir, and not to the executor; for the the contract ordained, that requisition for each part should be made before the terms at which the payment of every part thereof should be made. But it might be alleged, that the executor hath alike right to the rest of the whole sum, as to the first term's payment of the whole three, seeing the creditor died before the first term, and thereby the clause of the heritable security contained in the contract, might appear to be no more profitable to the heir, for the other two terms than for the first; the creditor not living while that clause might take effect; and albeit requisition was made, by the necessity of the condition required by the contract, for the first term's payment, that inferred to the executor no prejudice, because the executor might also require before any term at which he required payment, as well as the heir. Likeas, it might also appear, that the executors had no more right to the annualrents of that part of the sum for which requisition was made, than for the rest, because the creditor survived not the term, whereat he might have craved the annualrent thereof, no more than the rest of the annualrent; so that the reason is alike for all; for the executor's right is alike for all *quoad hoc*, that the creditor lived not while the annualrent might have been craved by himself, and so that thereby his right fell to his executors; but it was so found, as is above written, because the contract was very strictly conceived in heritable terms.

Act. Lawrie.

Alt. Cunninghame.

Clerk, Gibson.

Fol. Dic. v. I. p. 373. Durie, p. 503.

The Title HERITABLE AND MOVEABLE is continued in Volume XIV.