

No 54.

reason to deny that there was a charge given by the defunct upon the Earl of Errol's bond, and granted diligence for recovery of Randerston's bond ; and as to the modification in the former decret, remitted to the Lord Reporter to consider if there was any exorbitancy in the former modifications, and ordained the relict to depone as to her intromission with lying money *ad hunc effectum*, to affect her liferent, and what she may have right to *jure relictæ*, after her husband's decease, and refused to allow annualrent for the legitim and legacy.

*Sir P. Home, MS. v. 2. No. 867.*

---

SECT. X.

Sum destined to be laid out on Heritable Security.

No 55.

Altho' sums in bonds were destined by contract of marriage to an heritable use, they were found to belong to executors, because the destination was not contained in the bonds and the sums had not been uplifted.

1615. February 8.

STEWART *against* MOWAT.

IN an action betwixt Sir James Stewart and Alexander Mowat, concerning certain moveable bonds pertaining to James Stewart of Jerusalem, rebel, it was *alleged*, That the said James, rebel, being obliged by his contract of marriage to lay 10,000 merks upon land to him and his wife, and to his heirs to be procreated betwixt them ; the said James made Mr John Wardlaw assignee to these bonds, whilk Mr John made Mr Alexander Mowat assignee *ad hunc effectum*, that the said sums might be uplifted and laid upon lands for fulfilling of the contract of marriage ; for fulfilling whereof, the said Mr John Wardlaw, became cautioner, and so being destined to an heritable use, they could not be compted moveable ; which allegiance the LORDS repelled, in respect of the said destination not being contained in the body of the bonds, and that the sums were not yet uplifted nor employed.

*Fol. Dic. v. 1. p. 369. Kerse, MS. fol. 133.*

No 56.

1617. June 18.

EXECUTORS OF RUSSEL *against* SANDILANDS.

IN an action pursued by the Executors of William Russel *contra* Mr James Sandilands, in the which the relict was admitted for her interest, the LORDS found the sum moveable, notwithstanding of Mr James's will, whereby he declared that the money was given him to be employed by the man and wife