

'sonal estate; and that they shall not be descendible to heirs, as *sua natura* No 49.
'they were.'

THE COURT found, That the subject in question was moveable, and fell under the right of *legitim*.

For Mr Hog, *Lord Advocate.* Alt. G. Fergusson. Clerk, Sinclair.

S. *Fol. Dic. v. 3. p. 265. Fac. Col. No 196. p. 407.*

SECT. IX.

Obligations to lay out money on heritable security.

1586. November. HAMILTON against LAMB.

THERE WAS a woman callit Hamilton that persewed ane Lamb and Gilbert Dick in Edinburgh for a certain soume, the whilk the said Lamb's father was bund and obliged in ane registrate contract to lay upon land to the weilfare of the persewar, wha was his spouse, and to the bairns gotten, or to be gotten betwixt them, and so he being aire and eldest son to his father, ought to deburse the said soume, according to the contract whereintill his father was bund.—It was *answered*, That the persewar was executrix and intromissatrix with her husband's geir, and so the aire could not be persewed, while she and her intromission were first discussed, or at the least for the one half, according to her intromission. To the whilk it was *answered*, That the bond and obligation was made upon money to be laid upon land *et sic propter destinatum usum*, whilk was in sasine of land, the money that was ordained be this bond could not be holden moveable goods or geir, *sed quasi immobile et onus hereditarium*, for the whilk it behoved the aire to be persewed, and not the executrix and intromissatrix with the moveable goods.—THE LORDS fand be interlocutor, That the aire might be convened and not the executrix.

Fol. Dic. v. 1. p. 369. Colvil, MS. p. 410.

1628. March 14. GRAHAM against FINNIE'S HEIRS.

IN an action by Graham, relict of Finnie, against the heir and executors of her husband, and also against her husband's debtors, particularly called in the summons, to hear and see the debtors decerned to pay to her the profits of cer-

No 50.

A husband became bound to employ upon land a sum to his wife. Found, that after his death this sum was due by his heir, and not by his executor. The reverse of this found, Graham against Finnie's Heirs, No 51, *infra*.

No 51.

Found, (the reverse of Hamilton against Lamb,

No 51.
No 50. *supra*.
that a
sum destin-
ed to be laid
out on land
for the behoof
a wife, after
the death of
the husband,
was due by
the executor,
*secundum vires
inventarii*,
and that the
heir would be
liable only for
the deficien-
cy.

tain moneys lent to them, and addebted by their bonds to her husband, seeing by her contract of marriage her husband was obliged to provide her to her life-rent of all lands, and all sums of money which he should lend out on bond, at any time after their marriage; and therefore she craved the debtors to pay to her the yearly annualrent so long as they retained the moneys; and that the heir and executors of the defunct should employ the same again *de novo* to her use for her lifetime, conform to the contract. This action was sustained against the debtors, albeit they were not bound to her in their bonds, but to the husband, seeing the heir and executors were called as said is, in this pursuit; and because some of the bonds were conceived to be paid to certain of the defunct's bairns, who had thereby only right thereto; so that the debtors could not in law be compelled to pay any annualrent to the relict, for these sums which they were by bonds subject to pay to the bairns, and not to the defunct's self, therefore the action for the sums of these bonds was sustained against the heir and executors, for causing of them provide the relict to the life-rent thereof; and found, that this action, for employment of a sum upon annualrent to the relict during her lifetime, was competent also against the executors as against the heir, and that it was a fact prestable by executors; but declared, that the executors should have *beneficium inventarii*, and the heir would be liable for the rest.

Act. *Oliphant & Primrose.*

Alt. *Nicolson & Mowat.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 369. Durie, p. 361.

* * In conformity with the above was decided the case of Porteous against Veitch, No 33. p. 5463.

1638. December 11. SCHAW against CRAWFORD.

No 52.
Found in con-
formity with
Hamilton a-
gainst Lamb,
No 50. p.
5481.

GELLS SCHAW, relict of umquhile Crawford of Slatterton, being his second wife, pursues his eldest son of the first marriage, as lawfully charged to enter heir to him, to employ to her in life-rent, and to her bairns in fee, 3800 merks, conform to a bond granted to her by her husband of that tenor; and the defender *alleging*, That the pursuer was executrix to her husband, and was intromissatrix with his goods and gear, and so ought to fulfil the same herself, and was both debitor and creditor, and ought to relieve the heir thereof; this exception was repelled; and albeit she was both executrix and intromissatrix, yet it was found, that she had good action against the heir, and that the executrix was not obliged to relieve the heir of this debt, which was heritable, and where-to the heir was liable, without relief against the executrix, the same being heritable.

Clerk, *Scot.*

Fol. Dic. v. 1. p. 369. Durie, p. 657.