

without mention of any heirship to her heir; and the interest of heir and executor was to be disputed among them, *si ipsa corpora*, and not the estimation of these speces, as use is, for the most part,—was confirmed. And it is to be noted, that, if the heretrix had outlived her husband, without question her heir might have had an heirship; and farther, if she had had any goods, which the lawyers call *bona receptitia*;—*Ulp. tit. 6, de Dotibus lib. singulari; et apud Gell. lib. 17, cap. 6*;—which are those, that a wife having had one husband or more, might have cepted and retained to herself, by her contract of marriage with her subsequent husband. Even that wife, deceasing before her husband, might have an heirship out of those goods; *quia non erat ibi communio bonorum*.

There was here alleged a practique, *The Laird of Traquaire against Home*, for the heirship of Home's wife, called *Rutherfoord*, being the Laird's near cousin, in the year 1562, cited out of Balfoure's Practiques, Maitland's, and the Lord Culrosse's: Which the Lords did not respect; for the inviolable practique and custom of the consistories, past memory of man, *in viridi observantia*; and in respect of the confusion that might ensue thereon; and in respect of the late acts anent heritable bonds in favours of the rest of the bairns and nearest of kin by the heir.

Page 99.

1649. December 18. The LADY TULLIALLAN *against* CRAWFURD.

THE Lady Tulliallan was ordained to be answered and obeyed of the sum contained in a bond granted to her behoof by the comprisers of her husband's estate, whose comprisings were expired far above the avail of the lands long before that transaction, which was for her infetment of liferent and kindness; and that against one Crawford, creditor also to her husband for 3000 merks, and the annualrents thereof, promitted in tocher with his sister to the said Crawford.

Page 101.

1649. December 19. SIR WILLIAM SCOT OF CLERKINGTOUNE, one of the Senators of the College of Justice, *against* GILBERT KIRKWOOD'S HEIR, &c.

IN the action for proving of the tenor, by Sir William Scot of Clerkingtoun, one of the Senators of the College of Justice, of a charter granted to umquhile Gilbert Kirkwood, and of a renunciation by one M'Ronald, anent the lands of _____; all parties having interest being called, suppose none compeared in the contrary; the foresaid charter was produced lacerat; and, as it seemed, consumed by w——, yet battered together, having so much of the substantiality thereof as might show the verity of the matter: *item*, An extract of the foresaid renunciation out of Mr Francis Hays register, to make up the truth of the principal; and receive certain famous witnesses for farther probation. Whereupon the Lords found the said summons and action relevant.—*See the next Case*.

Page 101.