

1667. February 15.

LADY DIANA MAXWELL *against* LORD BURLEIGH, and Others.

No 9.

An universal legatrix having died, her executor could not sue directly the debtor of the first testator.

LADY DIANA MAXWELL, Lady Cranburn, and other executors confirmed to the Countess of Dirleton, pursued the Lord Burleigh, as representing his father, for payment of a bond granted by his father and others to the umquhile Earl of Dirleton, for the price of a great quantity of victual; and that, upon these grounds, that the pursuers are executors surrogated to the Countess, and have license to pursue; which Countess had an assignation from the Earl to his household stuff, which bore this general clause, 'And to his chattels, and other moveable goods and gear whatsomever;' under which generality this bond is comprehended, being moveable, and for victual, and so is a chattel, as the word is understood by the law of England; whereby all that is not by infeftment of fee is comprehended by the word chattels, and belongs to the executors as laisses, &c.; *2dly*, The Countess was nominate universal legatrix in the Earl's testament, and thereby has right to this moveable bond; *3dly*, As relict, she has right to the half. It was *alleged* for the defender, no process upon any of these titles; *1st*, Because the assignation cannot be extended to this bond; neither is the word chattels to be interpreted according to the law of England, the assignation being made by a Scotsman, and made in Scotland, after the Scottish manner; *2dly*, The pursuers, as executors to the Countess, cannot pursue upon the universal legacy, the debtors of the defunct, but only the defunct's executors; because this bond is yet *in bonis primi defuncti*, and must be confirmed; *3dly*, The relict cannot pursue the debtors for her half, but at least she must call the executors.

THE LORDS found both the last allegiances relevant; but, as to the first, before answer, they ordained the pursuer to adduce what evidences they had, to instruct the signification of the word chattels by the law of England, in respect it was notour to them, that the Lord Dirleton, being a servant of the King's, lived the most part of his time in England, and in Scotland there is no use of the word chattels.

*Stair, v. 1. p. 442.*

1671. July 12.

MURRAY *against* MURRAYS.

No 10.

A LEGACY is only payable out of the defunct's free goods.

*Fol. Dic. v. 1. p. 535. Stair. Gosford.*

\* \* \* This case is No 68. p. 5689. *voce* HOMOLOGATION.