

No 60.

to several persons, and failing of the first, and heirs of his body, to the second and third, without mentioning of heirs, the second dying before the first person of the tailzie, and leaving heirs behind him, whether his heirs, or the third person mentioned in the tailzie, would succeed, the question would be more difficult.

*Gosford, MS. No 191. p. 76. & No 218. p. 87.*

No 61.

A bond being granted to two sisters in fee, and the longest liver of them, neither the husband of the first deceasing, nor her executors, will have right to any part thereof.

1673. *January.* ISOBEL and GILES ARCHIBALDS *against* OGILVIE.

IN a double poiding, raised at the instance of Mr Thomas Hay, who was cautioner in a bond of 2000 merks granted to the said two sisters, there being compearance made for the son of Alexander Ogilvie, who had married the said Isobel Archibald, one of the said sisters, to his second wife, it was *alleged* for him, That he ought to be preferred, at least to the half of the sum due to his mother-in-law; by his father's marriage with her he had right to her part of the sum *jure mariti*, the bond being moveable. It was *answered* for the said Isobel, That the bond being granted to her and her sister Giles, and the longest liver of them two, their heirs and executors, her husband dying while both the sisters were alive, no part thereof could belong to her husband's heirs or executors, and he could have only right to her part of the annualrent during the marriage, seeing the fee of the sum was provided for the longest liver of the two sisters, and could not belong to the other sister. *2do*, The bond bearing annualrent to be paid during the not payment of the principal sum could not belong to Ogilvie her husband's executor, who survived her, because, by the act of Parliament 1641, such bonds are declared only to be moveable as to all persons *nisi quoad fiscum et relictam*; and as to Isobel, or her executors, could have had no right, if the bond annualrent had been made to her husband, so neither ought his executors to have right he dying before her, there being *par ratio*.—THE LORDS did prefer the said Isobel, and found that the fee of the bond could not fall to Ogilvie, nor his executors, unless the said Isobel's sister Giles had died during the said Isobel's marriage with Ogilvie; but, if it had been so, it is thought that it would have belonged to him, and so the wife had only right *jure relictæ* to an half or a third part thereof; and the husband would not have been excluded upon the act of Parliament 1641.

*Fol. Dic. v. 1. p. 297. Gosford, MS. No 567. p. 307.*

No 62.

1736. *December 17.* BURNET *against* BURNET.

MR ALEXANDER BURNET, minister of the British congregation in Dantzic, made his will in the year 1712, wherein he names certain trustees, (and whom he calls the executors of this his last will), to see to the ordering and managing