

S E C T. XI.

Assignations of Bonds secluding Executors.

No 64.

A bond secluding executors, assigned in favour of one, and his heirs, executors, or assignees, is thereby rendered moveable.

1680. *June 17.* MR JOHN SANDILANDS *against* AGNES SANDILANDS.

A COMPETITION betwixt the Heir and Executors of Mr Robert Sandilands for 2000 merks. The heir claimed it, because it was provided to Robert himself, and failing him to his daughter Rachel, and her heirs and assignees, excluding executors, and that she had renounced it in her contract of marriage. *Alleged*, Her renunciation made it moveable, because she had renounced it in favour of her father, his heirs, executors, and assignees. *Answered*, This ought no more to alter the nature of the bond, (which was originally heritable,) than the assignation of an heritable bond altered the same in the person of the assignee. THE LORDS preferred the executor.

Fol. Dic. v. 1. p. 369. Fountainball, MS.

No 65.

A bond secluding executors being assigned by the creditor to his wife, with his other effects, without secluding her executors, was found heritable in the assignee's person.

1708. *January 28.* GEORGE LOCKHART *against* ROBERT MUIRHEAD.

GEORGE LOCKHART of Carnwath grants bond to the deceased Robert Muirhead for L. 9000 Scots, the bond expressly secludes his executors, and so is heritable. Robert assigns this and his other effects to Martha Lindsay, his wife, with this express condition and provision, that she pay to Anne Muirhead, their only child, the sum of 7000 merks. The father and mother being both dead, Anne Muirhead, the daughter, serves heir to her father, and confirms executor to her mother, and thereon charges Carnwath for payment. He suspends on these grounds, that the bond being heritable in the person of the first creditor Robert Muirhead, by the 32d act 1661, his assignation of it to the wife, with the burden expressed in favour of their daughter, could not alter the nature of the right, but it still remained heritable; and so her confirming herself executrix to her mother cannot convey the right so as she can sufficiently uplift and discharge this heritable debt, and he is not *in tuto* to pay it; and it has been oft decided, that even a charge of horning, which will make a sum due by infestment moveable, will not render a bond secluding assignees moveable, because the design of the creditor is thereby not to take it from his heir, and give it to his executor; 13th July 1676, Christie *contra* Christie, Sec. 24. *b. t.*; and 30th December 1690, Heirs and Executors of Bonar *contra* Gray*. — *Answered*, By the husband's disposition to the wife, her executors are not excluded, which he would have done if he had minded that it should be

* Examine General List of Names.