

No 119. the arrestment, dies, after which, James Nasmith, heir to his brother Henry, pursues before the Commissary, and upon a process by a sentence, obtains this decret recovered by Henry, and the arrestment foresaid used by him, transferred in him as heir to Henry; and in the same sentence, the relict, in whose hands the arrestment was made, is decerned to make the arrested goods forthcoming, for satisfaction of the sums contained in that sentence transferred. THE LORDS found this decret of transferring, and making arrested goods forthcoming, null, because they were both obtained upon one process, and contained in one sentence, which ought to have been done by two several pursuits and two decreets, and not to have been joined in one, and so could not be sustained, being so confounded; for if confusion of diets be a cause to annul proceedings of inferior judges, far more the confusion of sentences; and also the LORDS found, that albeit the obligation was heritable, whereupon decret was obtained by Henry as heir, yet being decerned at his instance, by his decease the sums therein contained, (sentence being recovered thereupon, and arrestment executed at his instance before his decease), were made and became to be moveable, and so did pertain to Henry's executors, and not to his heirs, and therefore the decret obtained by his heir was found null. See JURISDICTION.—PROCESS.

Act. Nicolson.

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. 1. p. 373. Durie, p. 328. & 350.

1681. February 8. DUNBAR against M'KENZIE.

No 120.

The sum of a wadset found to belong to the heir of the wadsetter, he not having accepted of the sum during his life, although consigned.

THE Laird of Dunbeath having right by a wadset to the lands of Rarighies, whereof umquhile Mr Thomas M'Kenzie had a right of reversion, and did thereon use an order of redemption, and consigned the sum of 10,000 merks in the hands of Hugh Hamilton Bailie of Edinburgh, which he again uplifted himself; Dunbar of Hemprigs being executor to Dunbeath, and having confirmed the said sum, obtained decret against Mr Thomas M'Kenzie in anno 1650 for payment of the sum; and now John Dunbar of Hemprigs, as executor to his father, pursues Mr John M'Kenzie, as representing his father, for payment of the sum; who *alleged* absolvitor, because there having no declarator of redemption followed upon the consignation, and Dunbeath never having accepted the consignation, nor insisted for uplifting of the sum, but continued to possess the wadset lands till his death, the sum of the wadset could not become moveable and fall to Dunbeath's executor, without his own deed, or the sentence of the Lords, or a decret of declarator; and it could not be in the power of the debtor or reverser, to make Dunbeath's sums, which he had made heritable to descend to his heir, become moveable, to fall to his executor; and therefore though the defender were insisting in a declarator of redemption up-

on the consignment, the consigned sum could only belong to Dunbeath's heirs, No 120.
 who only could renounce the wadset, and not to his executor; and therefore
 the defender is not obliged to pay the consigned sum, but may, and doth pass
 from the order.

THE LORDS found the defender not obliged to re-produce the sum, or to in-
 sist in the declarator; and found, that if he did insist, that the sum would fall
 to Dunbeath's heir, and not to his executor, and that it is not in the case of the
 price of land due by a contract, not perfected in the disponent's time, which
 may belong to the disponent's executor, though the disposition must be perfect-
 ed by his heirs, it being by the disponent's own deed, that takes the price as a
 moveable sum, and thereby preferring his executor to his heir.

Stair, v. 2. p. 856.

1712. February 27. SCOT against DUTCHESS of BUCCLEUGH.

No 121.

FOUND that decree did not render an heritable bond moveable, unless a
 charge had followed on it.

Fol. Dic. v. 1. p. 373. Fountainhall.

*** See this case No 16. p. 3362.

S E C T. XXII.

Effect of Requisition.

1626. March 15. JOHN GRAY against WM. GRAHAM.

No 122.

FOUND, that arrestment may be made upon a bond, bearing the common
 clause after infestment, to pay without requisition, both for the principal sum
 and for the annualrents, after the charge continually to the term of payment.

Kerse, MS. fol. 235.

1630. March 10. DR. LINDSAY against TOWN of EDINBURGH.

No 123.
 The Town of
 Edinburgh
 became

THE Town of Edinburgh being debtor by an heritable contract, to umquhile
 Thomas Heriot, in the sum of L. 10,000, to be paid upon requisition at three