

jure mariti, and Laurieston's executors could only have right to pursue therefor. It was *replied*, That Laurieston's executors did not compear nor crave preference; and if they were compearing, they could not crave preference upon the foresaid ground, because the assignation bearing absolute warrandice, Laurieston and his executors could never quarrel the same as not being intimated, they being obliged in law to make good the Lady's assignation to the pursuer.—THE LORDS did repel the defence in respect of the reply, but ordained the pursuer to grant a receipt, with sufficient warrandice, against the Laird of Laurieston, or any representing him.

No 14.

Fol. Dic. v. 1. p. 385. Gosford, MS. No 644. p. 375.

1682. January 26. BARCLAYS *against* PEARSON.

No 15.

THE creditor in a bond dying after the term of payment of the principal, and before the term of payment of annualrent; the bond was found moveable as to the relict, the payment of annualrent being that which makes it heritable *quoad relictam*; but a clause to infeft would have made the bond heritable *ab initio*; and it is debateable, if a clause secluding executors would exclude the wife from her part of a bond, otherwise moveable, albeit it would cut off the fisk and executors.

Fol. Dic. v. 1. p. 385. Harcarse, (BONDS.) No 171. p. 38.

1684. March.

Mr WILLIAM GORDON, Advocate, *against* Sir PATRICK OGILVIE of Boyn.

No 16.

A BOND heritable by a clause to infeft, assigned to a woman, her heirs and executors, found to remain heritable in the assignee's person, and not to fall under her husband's *jus mariti*.

Fol. Dic. v. 1. p. 385. Harcarse, (BONDS.) No 195. p. 44.

1693. January 19.

SCOTT, and THOMAS FENDAR, now her Husband *against* PARKS, her Children.

No 17.

THE LORDS found, seeing there was no contract of marriage between her and her first husband, that his putting her name in the liferent of a bond of four thousand merks could not be ascribed in satisfaction of her third of the moveables *pro tanto*: But, as to the 2d point, found, though a charge of horning, on a bond bearing annualrent, made it moveable *quoad* the nearest of kin, and

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No 17.

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to fall under executry and confirmation, yet that it did not thereby become so moveable as to fall either to the relict or fisk; for a sum may be moveable *quoad* one effect, and yet not as to all other effects: And, as to the 3d, found the moveable debts could not be solely deducted off the relict's third, but out of the hail head of such debts as she could have a share of; and that she might be heard on her objections against the constitution of these debts, if they were either illegal or collusive, and not sufficiently proved.

1694. November 2.—Scott, and Thomas Fendar her spouse, against Parks her children, reclaiming against the Lords modification of their aliment at 100 merks each, and so mean that it could not maintain them now at schools, and at bed, board, and clothes, being now come to age;—THE LORDS were stumbled, *imo*, That it was the whole annualrent of their uniferented stock, and so, without encroaching on the principal, they could modify no more; *2do*, That there was no contradictor here, the bairns being past pupillarity, and wanting curators; and so not being authorised, the Lords found they could not proceed by way of bill, but *via ordinaria* by an action; and so they neither obliged him to keep them, nor put them away, but to do as they thought fit, and give a larger allowance on their peril.

Fol. Dic. v. 1. p. 385. Fountainball, v. 1. p. 547, & 641.

1748. November 22. EXECUTORS OF CAPTAIN CRAIG *against* HIS RELICT.

No 18.

A PERSON took a bond, on the 23d May 1744, for a certain sum, payable at the term of Martinmas thereafter, with the interest of the principal from the Whitsunday preceding, to the term of payment, and yearly thereafter during the not payment. The creditor having died before Martinmas, the question occurred between his relict and executors, whether the bond was moveable *quoad relictam*. THE LORDS found, that as neither the principal sum, nor the first term's annualrent, became payable at the time of the first creditor's death, the bond fell under the *jus relictæ*.

Fol. Dic. v. 3. p. 278. Kilkerran, D. Falconer, & Rem. Dec.

* * * See this case No 76. p. 5506.

1772. December 2.

ALEXANDER M'KENZIE, &c. *against* DEWAR and M'FARLANE.

No 19.

A process instituted, *stan- te matrimonio*, upon a bond,

NEIL CAMPBELL of Dunstaffnage, by bond of provision dated February 7. 1752, obliged himself, his heirs, &c. to provide and secure Lillias Campbell,