

No 24. heritable rights never make one a baron in the sense of moveable heirship, without they be completed by infeftment; and though it is the degree and quality that must be regarded in this case, yet even an infeftment of annualrent has been sustained to infer heirship, *Scrymzeour contra the Executors of Murray*, No 18. p. 5396. And as to his being a burghess's son, *non relevat*, for an honorary burghess's son gives no right to heirship, much less one unentered, *Lesly contra Dunbar*, No 15. p. 5392. THE LORDS found the heritable bond whereon infeftment had not followed did not give his heir right to claim moveable heirship; but found he had right thereto by the defunct's being heir to an actual burghess, who might have entered when he pleased, and bore stent in the town of Glasgow as a trafficking burghess. See QUOD POTUIT NON FECIT.

Fol. Dic. v. 1. p. 365. Fountainhall v. 2. p. 16.

No 25. 1730. February. MONRO against MONRO.

A MAN having purchased an estate, took the infeftments of the same to himself and spouse in conjunct-fee and liferent, and the heirs of the marriage in fee; whom failing, to the longest liver of him and his spouse and their heirs and assignees. There happened to be no heirs of the marriage, whereby the wife surviving, fell to have right to the lands in virtue of the said provision; but she also dying without being served heir of provision, it was questioned betwixt her heir and executor, Whether she could have heirship moveables? It was *argued* for the heir, That a conjunct-fee in the person of a relict, has all the effects of a simple and absolute fee, excepting the power of alienation. It was *argued* on the other side, That such a conjunct-fee resolves merely into a liferent which is but a servitude; and with respect to which, there can neither be an heir nor heirship moveables.—The LORDS found no heirship moveables due. See APPENDIX.

Fol. Dic. v. 1. p. 365.

No 26. 1744. December 15. IRVINE against IRVINE.

A PERSON infeft in some houses in a village, was found to have heirship moveables.

Fol. Dic. v. 3. p. 264. D. Falconer.

. See this case, No 49. p. 2304.