

1749. July 12.

The TRUSTEES of DOCTOR FRASER *against* FRASER of Phopachy.

ANDREW AUCHINLECK of Conachy, and Mr Thomas his brother, granted bond to Dr William Fraser of Phopachy for 2000 merks; and, in the same deed, Mr Thomas assigned to the creditor, in security, as much of 4300 merks, and annualrents that should arise thereon, due to him, heritably secured, as should pay the said 2000 merks and annualrents.

Dr Fraser conveyed his moveable estate to trustees, for certain uses; between whom and William Fraser of Phopachy his heir, there arose a competition for this 2000 merks; the one *arguing*, that it was due by a moveable bond; and the other, that an heritable debt was assigned in security of it.

THE LORD ORDINARY, 29th June, "found the sum heritable." And THE LORDS refused a bill, and adhered.

Petit. *A. Macdowall.*

*Fol. Dic. v. 3. p. 267. D. Falconer, v. 2. No 84. p. 91.*

1757. November 15.

GEORGE FULLARTON of Bartonholm, *against* CHARLES SCOT of Bavelaw.

WILLIAM SCOT of Bavelaw having died in the 1691 without issue, the succession of his heritable estate devolved upon Charles Scot of Bavelaw, his brother; and the right to his executry fell to his five sisters; four of whom were married, and one of them, viz. Agnes, to Adam Fullarton of Bartonholm.

Charles Scot, soon after his brother's death, with consent, as it would seem, of his sisters, confirmed himself executor to his brother; and, *inter alia*, gave up L. 2820 Scots, as the bygone annualrents of two bonds which had been granted to William Scot, secluding his executors, for L. 1000 each, by Richard Lauder of Hatton; and having afterwards made up titles, by general service, to these two bonds, led an adjudication, in 1694, against the estate of Lauderdale, for payment of the accumulated sum of L. 5524 Scots.

In 1695, Charles Scot entered into a contract with his sisters, and their respective husbands; whereby, upon a narrative of his brother William's having intended to divide 4000 merks in different proportions therein named, amongst him and his sisters; which intention he was willing to fulfil; he therefore assigned and disposed to his said sisters certain debts therein specified, partly heritable, partly moveable; particularly the foresaid two bonds due by Lauder of Hatton, to be divided amongst them, according to the proportions mentioned in the deed, deducting the expense that might be laid out by him in recovering the same. On the other hand, the sisters and their husbands renounced, in favour of Charles, all right they might have to the office of executry, or to

No 59.

A sum due by a moveable bond, but in security of which, the debtor had assigned a corresponding part of a larger sum, due by an heritable bond, was found heritable.

No 60.

A supervenient heritable security or adjudication for a moveable debt due to a wife, does not so far alter the nature of the debt as to exclude the husband's *jus mariti*, or after the wife's death to transmit the debt to her heir in prejudice of her husband.