

nary moveable Bond bearing to be eiked to the Reversion of a Wadset, which Wadset was declared in the Bond not redeemable till the Bond was satisfied, this Bond not being upon Record in the Register of Reversions, tho it contain an Eik to the Reversion of the Wadset, is moveable and belongs to Executors, 6. March 1683 Rollock contra Grant. A Bond granted to one his Heir or Assignies is moveable, and belongs to Executors: because in or Heir in general, Executors, who are Haeres in mobilibus, are comprehended. And this is none of the two Cases expressly accepted in the Acts of Parliament 1541 and 1561: and a tacit virtual Exception is not to be inferred. If one dispone Lands, and the Receiver of the Disposition give Bond for the Price that Bond would belong to the Disposer's Executors; seeing the Seller follows the Buyer's Faith for the Price, and taking Bond in Satisfaction thereof, was the same upon the Matter as if the Price had been paid. And even in the Case of a Sale by Way of Contract, where the one Party obliges himself to give Lands, and the other to pay a Sum of Money as the Price: the Obligation for the Price will fall to the Disposer's Executors: because tho there the Buyer may have Right to retain the Price, till he get the Seller's Part fulfilled by his disposing; yet still the Right of the Price is in Obligation, and it appears, that the Disposer intended to have, in Place of his Lands, a personal or moveable Estate Stewart Answers to Dirlot. Doubts Tit. Executors & Tit. Heir & Executor. By a Contract of Sale, the Buyer of Lands being obliged to pay the Price, but till an Infeftment of Warrandice in the Lands were purged, till which Time he was allowed to retain it for Payment of Annualrent; that Money belongs to the Seller's Heirs under the foresaid Condition, tho they can not have it till that exist Stewart Hie. Tit. Sums heretable and moveable. The Price of Land due by a Contract not perfected in the Disposer's Time, will belong to the Disposer's Heirs; tho the Disposition must be perfected by his Heir. But where the Creditor in a Bond obliging the Debtor to dispose Lands for a certain Price, chargeth the Debtor to implement, who dies in the Interim, the Debtor's Heir will have Right to the Price: because here it was in the Creditor's Option to charge for implement or not, and the Price was not in Obligation but in conditione or modo, if implement should be given, and then is due only to the Person who can dispose, viz. the Debtor's Heir Stewart Hie. Tit. Executors & Tit. Heir & Executor. A particular Share in the African Company, due out of the Equivalent after the Company was dissolved, was found moveable and legally affected and carried by Confirmation of the Proprietors' Heir. Creditor, who was preferred to an Assignee of the said Share, albeit the joint Stock of the said Company was established by Charter and Seisin held of the Crown of Scotland, and destined not to be uplifted or transmitted to new Proprietors, but according to the Rules of the Company.

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Some Things are simply heretable, as Lands, Houses, growing Trees, the Surface of the Earth and all the natural Fruits thereof while inseparable from it. Stat. Lib. 2. Tit. 1. §. 9. Mills, whether they go by Wind or Water are reckoned into immobilia. Hering. de molendin. Lu. §. n. 26. Stewart Hie. Tit. molendin. navalia. Dispositions or other Land Rights with a Precept of Seisin or Obligation to infeft, tho not completed by Infeftment, heretable Bonds having a Clause of Infeftment, after the Term of Payment are simply heretable. Stat. Hie. Thus a Bond granted to one his Heir, Heirs or Assignies, with a Precept of Seisin, was found to be heretabily conceived 16 January 1711 Gray contra Cairncroft. Debts with which a Disposition of Land is burdened are heretable and real affecting singular Successors to the Receiver of the Disposition. Novemb. 1685 L. Balander contra Duncaif of Arnisston. 24 Jun. 1687 Koppingale contra Koppingale 6 January 1677 & 11 Novemb. 1679 Vicars of Mouswal contra his Heir in 4 Decemb. 1707. Mithen contra Goodells. Personal Bonds excluding Executors are simply heretable quoad the principal Sum tho the Annualrent of such Bonds belongs to the Executors 17 Jan. 1683 Wishart contra E. Northesk. Nor can the principal Sum in such a Bond be disposed of upon Death 12 January 1725. McKay and his Wife contra Robertson. Sums appointed to be applied upon Land or real Security are heretable. Melonza Just. Lib. 2. Tit. 2. §. 6. For our Law in determining whether a Sum be heretable or moveable, hath great Regard to the Will of the Proprietor, who is best Judge how his Estate should be bestowed. Yea, a Destination by Way of Tailzie, in a Bond granted to a Man and his Wife, and the longest Liver of them two in Liferent, and to the Heirs to be provided betwix them in Fee, which failing to the Wife's Heirs and Assignies; makes it heretable without either Infeftment or Obligation to infeft. So that in the Event of the Husband and Wife dying without Children of the Marriage, it belongs to the Wife's Heirs, and not to her Executors 19 Feb. 1714 Simson contra Walker. In which Case there were two Degrees of Substitution to the Husband the Fiar viz. 1^o The Heirs of the Marriage and 2^o The Wife's Heirs or Assignies. Which Heirs of the Wife would succeed as Substitutes by a general Service without Necessity to con from themselves Executors Stewart Hie. Tit. Tailzies & Tit. Bond heretable. Sir James Stewart (Hie.) thinks that a Bond of the Nature aforesaid is in so far moveable, that the Fiar might dispose of it in Testament, seeing it doth not expressly exclude Executors, or contain any Obligation to infeft: and that if the Right of such Bond should fall to the Heirs and Assignies, the Wife's Heirs would be understood her Heirs in mobilibus, that is her Executors. But for this Opinion I can see no Reason. Besides, it is overruled by the Lords, who found that the Bond belonged to the Wife's Heirs, and not to her Executors. And Sir John Mithen Doubts Tit. Tailzies holds, that the Provision in Favour of Heirs with the Substitut

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