

1610. May 24.

HILL *against* KINLOCH.

AN obligation heritable made by him who might have an heir, being transferred, after his decease, against his executor, or the intromitter with his goods and gear, will only have execution against them for the annual rent resting owing before the defunct's decease, but not for the principal sum or annual rent of years after his decease, which is only competent against his heir, or against his apparent heir intromitting with his goods and gear.

Fol. Dic. v. 1. p. 246. Haddington, MS. No 1868.

No 9.

1611. January 17.

TRAIL *against* JACKSON.

IN an action of suspension pursued by John Trail in Dundee, *contra* Janet Jackson, relict of umquhil James Kyle, and Common Seal, her spouse for his interest; the LORDS fand, that the executors of James Kyle might be compelled to lay 2000 merks upon land to the said Janet, conform to the contract of marriage, and that the said action was not only competent against the heir, but also against the executor.

Fol. Dic. v. 1. p. 246. Kerse, MS. fol. 132.

No 10.

Not only an heir, but even an executor may be compelled to lay out money upon land in implement of a contract of marriage betwixt the defunct and his relict.

* * * Haddington reports the same case :

A RELICT and intromissatrix with the goods and gear of a defunct, being pursued, and defending her that there are executors confirmed, to wit, the bairns of the defunct; if it be *replied*, That the confirmation is fraudulent, because the bairns being minors, she, as mother, gave up the testament, and made faith, that the free gear amounted only to forty pound, albeit she intromitted with a thousand pounds more, the reply will be admitted. Albeit actions for infestments and heritable rights be only competent against the heir, yet, if a man be found to bestow money for infestments, heritable or in liferent, that action is competent against the executor of the defunct to furnish the money to that effect.

Haddington, MS. No 2099.