No 54. reason to deny that there was a charge given by the defunct upon the Earl of Errol's bond, and granted diligence for recovery of Randerston's bond; and as to the modification in the former decreet, remitted to the Lord Reporter to consider if there was any exorbitancy in the former modifications, and ordained the relict to depone as to her intromission with lying money *ad hunc effectum*, to affect her liferent, and what she may have right to *jure relictæ*, after her husband's decease, and refused to allow annualrent for the legitim and legacy.

Sir P. Home, MS. v. 2. No 867.

SECT. X.

Sum destined to be laid out on Heritable Security.

No 55.
Altho' sums in bonds were destinated by contract of marriage to an heritable use, they were found to belong to executors, because the destination was not contained in the bonds and the sums had not been uplifted.

1615. *February* 8. STEWART *against* MOWAT.

IN an action betwixt Sir James Stewart and Alexander Mowat, concerning certain moveable bonds pertaining to James Stewart of Jerusalem, rebel, it was *alleged*, That the said James, rebel, being obliged by his contract of marriage to lay 10,000 merks upon land to him and his wife, and to his heirs to be procreated betwixt them; the said James made Mr John Wardlaw assignee to these bonds, whilk Mr John made Mr Alexander Mowat assignee *ad hunc effectum*, that the said sums might be uplifted and laid upon lands for fulfilling of the contract of marriage; for fulfilling whereof, the said Mr John Wardlaw, became cautioner, and so being destinated to an heritable use, they could not be compted moveable; which allegeance the LORDS repelled, in respect of the said destination not being contained in the body of the bonds, and that the sums were not yet uplifted nor employed.

Fol. Dic. v. 1. p. 369. Kerse, MS. fol. 133.

No 56.

1617. *June* 18. EXECUTORS of RUSSEL *against* SANDILANDS.

IN an action pursued by the Executors of William Russel *contra* Mr James Sandilands, in the which the relict was admitted for her interest, the LORDS found the sum moveable, notwithstanding of Mr James's will, whereby he declared that the money was given him to be employed by the man and wife

No 56.

in conjunct-fee, and to the heirs to be gotten betwixt them; and that because no bond was made for employment thereof before his decease.

Fol. Dic. v. 1. *p.* 369. *Kerse, MS. fol.* 132.

1635. *February* 7. CAPTAIN WATSON *against* AITON.

No 57.
An obligation to lay out money when paid on heritable security, does not make it heritable till it be actually settled on land.

BY contract of marriage betwixt Captain Watson and his daughter on the one part, and Mr Andrew Aiton on the other part, Captain Watson is obliged to pay in tocher with his daughter, to the said Mr Andrew Aiton, 10,000 merks, at the receipt whereof the said Mr Andrew is obliged to employ 5000 merks thereof upon land or annualrent, to himself and his said future spouse, in liferent, and the longest liver of them two, and to the heirs gotten betwixt them in fee; which failing to his heirs whatsomever. After the marriage, and before the payment made of this sum by the Captain, the said Mr Andrew assigns the said sum to his said spouse, and the heirs gotten betwixt them, (she being then great with child) conform to the contract; which failing, *eo casu* he assigns 3000 merks of the said 5000 merks to his said spouse, and the other 2000 merks he assigns to his sister's bairns. This assignation, after the decease of the said Mr Andrew, there being no bairns on life procreated betwixt him and his said spouse, is desired to be reduced as done in *lecto ægritudinis*, at the instance of his heirs; wherein his relict, and the Captain her father being defenders, alleged that this sum was moveable, and so the disposition thereof could not be quarrelled; and the pursuer *answering*, that it was heritable, being destinated for infeftment upon land, the LORDS found, that the sum remained a moveable sum, even unto the time the same was employed upon land, conform to the destination; and that the destination of the employment, whereto the creditor was obliged, when it was paid to him by the debtor, made not the sum to be of the nature of an heritable sum, seeing the debtor was not obliged in annualrent therefor, neither was he obliged in the employment, but only the creditor at the receiving thereof; and albeit he had been so obliged, yet it remained ever moveable so long as it remained unemployed upon land, as the destination appointed, whether it were in the hands of the creditor or debtor, and far more while it remained in the debtor's hand unpaid by him.

Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 369. *Durie, p.* 753.

1637. *January* 19. ROBERTSON *against* SETON.

No 58.
A father, on his daughter's marriage,

THOMAS ROBERTSON and Janet Seton contracting marriage together, in their contract, Seton, father to his future spouse, is obliged to pay to Robertson the