

The creditor deceases. The wife, who was the person substituted in the bond, being left executrix to her husband, confirms the said bond in testament, and registers the same at her own instance against the debtor, and charges him to make her payment. The defender suspends, *alleging*, The sum being moveable, came under testament, and so behoved to be the relict's, as executrix, and the charge could not be sustained at her instance, as person substitute. THE LORDS sustained the charge.

No 6.

*Auchinleck, MS. p. 145.*

1629. February 13. COCHRAN against DAWLING.

AN husband being obliged to employ 10,000 merks to his wife in liferent, and when it was uplifted, to employ the same again as commodiously as he might to her use; and he having employed the same, after his decease, it is redeemed from her and his heirs by the debtor; at the time of which redemption, the heirs being minors, and the curators offering the money to the relict to be employed by herself, and offering their concurrence thereto, which being refused by her, and they desiring her concurrence to seek and find one to take the same for profit, and she not finding any, but refusing to meddle therewith, and the minor having done most exact diligence to get employment, and finding none till mid-term was past, and then being constrained to let it out for a quarter-term's profit, and so contending that they had done all they might, and which the most provident could do in their own affairs, they alleged that they could be no further obliged; notwithstanding whereof it was found, albeit the contract obliged only to employ to the best commodity might be, that for the bygone terms no more should be asked and paid to the liferenter but that quantity which was received for the money; but found, that in time coming, the heirs remained ever and still obliged to the liferenter in annual-rent for that money, of all terms after the term of payment of the money employed by them as is above written, albeit the heirs did never so great diligence, and albeit they should never get it employed, which should not liberate them thereafter.

Act. Aiton & Stuart.

Alt. Advocatus & Neilson.

Clerk, Scot.

*Durie, p. 425.*

1630. June 17. CRAUFORD of Carse against LUBBERLONE.

No 8.

A bond bearing the sum to be payable at a certain term, and failing thereof, the master borrower of the sum of 500 merks from his own tenant, by the bond allowed to the tenant 50 merks for the annual-rent of the said sum out of the