

No 17. taken away, and may be sought for and claimed by the creditor, after what legal manner he thought most expedient, whereof the LORDS thought that in reason he ought not to be prejudged. See PASSIVE TITLE.

*Fol. Dic. v. 1. p. 365. Durie, p. 791.*

1664. July 19. SCRIMZEOUR against EXECUTORS of MURRAY.

No 18.

ONE dying infest in an annualrent, has heirship moveables; for as the annualrent is a *feudum*, an annualrenter may be esteemed a *baro* as well as a petty feuar.

*Fol. Dic. v. 1. p. 365. Stair.*

\* \* See this case, No 4. p. 463.

1666. January 27. COLONEL JAMES MONTGOMERY against STUART.

No 19.

Heirship moveables cannot be, where the defunct had only a disposition without infestment.

IN the declarator betwixt these parties, mentioned the 24th instant, *voce* HERITABLE and MOVEABLE, it was *alleged*, That the plenishing and moveables could not be declared to belong to the pursuer, by virtue of Dame Elizabeth Hamilton's disposition, in so far as concerns the moveable heirship, in respect it was done on death-bed, and could not prejudice the defender, who is heir, even as to the heirship moveables.—It was *answered*, That the said Dame Elizabeth being infest neither in land nor annualrent in fee, could have no heirship.—It was *answered*, That her husband and she were infest in certain lands by Home of Foord, which were disposed to her husband and her in conjunct-fee, and to the heirs of the marriage; which failing, to whatsoever person the said Sir William should assign, or design; and true it is, he had assigned that sum to his Lady, whereby she had right of the fee, and so might have heirship.

THE LORDS found, That this designation made the Lady but heir apparent or of tailzie, whereupon she was never infest; and by the conjunct-fee, she was only liferenter; and that the assignation to the sums and right, gave not her heirs any heirship moveable.

*Fol. Dic. v. 1. p. 365. Stair, v. 1. p. 345.*

1668. February 1. — against SCOT and MUIRHEAD her Husband.

No 20.

A man taking to himself lands in life-rent, and to

MR HARY SCOT's daughter, and her husband Mr John Muirhead, for his interest, being pursued as representing the said Mr Hary, for a debt due by him, the pursuer insisted on the title of behaving as heir by intromission with his