

tenement, were in the general case sufficient to entitle the heir to heirship moveables, yet in this case the deceased, sometime before his death, had disposed the tenement in question to his sister the pursuer; and that as to the infeftment of annualrent over the estate of Creiggie, the deceased had also been denuded of it before his death by a conveyance in security of a debt which he owed her.

ANSWERED for the defender, That there could be no doubt that the infeftment of the deceased in a burgage tenement entitled his heir to heirship moveables: *Mack. Obs. on Act 1474: Stair 3, 5, 9: Bank. 2—292*: That the disposition of this tenement in favour of the pursuer, not only contained a power to alter, or revoke, or charge the subject with debt, but also a power to give it away gratuitously, and consequently was truly no more than a *donatio mortis causa*, which left the granter still fiar of the subject; that notwithstanding such a disposition, the subject would have fallen under James' forfeiture, and that a simple revocation by him would have annulled the pursuer's right without the necessity of James being reinvested: and lastly, As to the infeftment of annualrent, that the deed granted by James to his sister was not an absolute conveyance, but a mere right in security.

The Commissaries found, "That the defender has no right nor title to heirship moveables."—But the cause having been advocated, the Court, July 4, 1758, "remitted to the Commissaries, with instructions to find Robert Arbuthnot entitled to heirship moveables."

Lord Kilkerran says:—"This the Lords thought, on both grounds, that of his having a house, and that of his having an infeftment of annualrent, whereof he was not divested by the assignation on security to his sister."

1758. July 7. ROBERTSON *against* HIS MAJESTY'S ADVOCATE.

THIS case is reported in the Faculty Collection, (*Mor.* 11,280.) Lord Kilkerran has the following note upon the point which it involved.

June 28, 1758.—"I incline to think the interruption good, because judgment might then have been given, albeit the pardon had not passed the seals upon production of the warrant, for the same reason that a witness, though *socius criminis*, will be admitted, having a pardon, on production of the warrant, though it has not passed the seals, as it has often been found; but a new point occurred to the Court, not mentioned in the memorial, that since that act of interruption the prescription was run, and the cause was put off till Friday.

"It was in ANSWER, to the case of a witness, observed by the President, that it does not apply to this case, for that a witness may be admitted whenever his terror is over."

"July 7, 1758.—Sustained the claim."