

No 6. THE LORDS repelled the defence, in respect of the reply and condescence foresaid, unless the goods impignorated, and others intromitted with by the wife, did not exceed her share.

Fol. Dic. v. i. p. 592. Stair, v. 2. p. 78.

1675. June 18.

TAYLOR *against* RANKEN.

No 7.
Property of
money was
inferred by
having the
key of the
chest in
which the
money was.

JOHN TAYLOR, in the contract betwixt James Taylor and Marshall, his spouse, dispones to them his whole moveable goods; and, after his son's death, by a contract with his good-daughter, he, as taking burden for his oyes, dispones the whole moveables to her for 1000 merks. After his death, his three daughters, as executors to him, obtained decret against the said Katharine Marshall and Ranken, now her second husband, in the Regality Court of Falkirk. They suspend on this reason, that the defunct was an indigent person, and lived and died with the defenders; and, by his general disposition, could not be presumed to have any means; and yet the decret in absence was for L. 640 of money, and some body-clothes that were in two chests in the defenders house; which chests were a part of the moveables disposed by the defunct, and to which the defender had frequently access, by opening the chests, and putting any thing therein he pleased. It was *answered*, That this reason is not relevant; because, the defunct having lived long after both his dispositions, did and might acquire this money; *2do*, The charger hath proved, or shall prove, that the defunct had the keys of the chests in his possession the time of his sickness, and delivered the same to one of his good-sons, which sufficiently instructs that the money and clothes were in his possession, and so belonged to him and his executors, albeit the chests were the defenders; for the having of the key doth evidently infer the possession of what is under that key.

Which the LORDS found relevant, unless the defenders, by a positive and stronger probation, could prove, that the money and clothes were theirs, and how the same were put in the chests.

Stair, v. 2. p. 333.

1675. December 17.

THOMSON *against* ELIES.

No 8.

THE LORDS found, in the case of a right of moveables, granted by a husband to his wife, with the burden of his debts, and a provision that they should be affected with the same, that the property of the goods was settled in the person

of the wife, so that she might dispose of the same. And those who acquired right thereto are not concerned to enquire whether the price be converted to the use and satisfaction of the creditors, who will have a personal action against the wife. So that she will in effect be in the case of an executor or trustee. But if the goods so affected be extant, the creditors of the husband will be preferable to the wife's proper creditors, her right being fiduciary, (as said is) and to the use foresaid. See No 141. p. 5939.

No 8.

Fol. Dic. v. 1. p. 593. Dirleton, No 320. p. 155.

1679. January 28.

HOG against HAMILTON.

MR WILLIAM HOG having right to some moveable goods from the nearest of kin to Andrew Wardlaw, and likewise having assignation from the donatar of his escheat, pursues Mr Robert Hamilton for delivery of the goods; who *alleged*, Absolvitor; because, the possession of these goods presumes the property thereof, and there can be no ground to vindicate them upon Wardlaw's interest, who is dead 20 years ago, and the goods have always been possessed by Marion Geddes, his relict, and were *invecta* by her in the defender's lodging, and so liable to the mails and duties thereof. It was *replied* for the pursuer, That the property of moveables, arising from possession, is but a presumptive title, and admits of contrary probation; but, in this case, the presumption ceaseth; because, it is offered to be proved, that these moveables were in the possession of Wardlaw when he was denounced, and also when he died; so that they could not pass by commerce, unless they were instructed that they were confirmed; and the relict's possession, though for 20 years, could not infer property, because, the goods being confiscated by the husband's rebellion, the relict's right ceased.

No 9.
Found in conformity with
Sample 3
against Givan,
No 6. p.
9117.

THE LORDS did not sustain the reply upon the rebel's possession at the time of the rebellion, which, though it exclude his relict's interest, doth not hinder the disposal of the moveables by commerce to creditors; but sustained the reply on the possession of the defunct, unless confirmation were instructed.

Fol. Dic. v. 1. p. 592. Stair, v. 2. p. 683.

* * * Fountainhall reports this case.

A DONATAR to the escheat of a rebel pursues some intromitters with moveables belonging to the rebel. *Alleged*, I cannot deliver these moveables to you, because I have now possessed them by the space of these 20 years; and possession *in mobilibus* presumes property, and needs no other title. *Replied*, Posses-