

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.*

No 56.

1635. February 7.

CAPTAIN WATSON *against* AITON.

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 whatsoever. 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 infestment 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.*

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.

1637. January 19.

ROBERTSON *against* SETON.

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

No 58.

A father, on his daughter's marriage,