

ALLEGED,—It is no new thing to see a burgh royal have jurisdiction where they have neither property nor superiority; and a burgh of barony and royal are consistent, as in Dysart. This was to be heard *in presentia*.

*Act.* Cunyghame. *Alt.* Lockhart and Wedderburne.

*Advocates' MS. folio 54.*

1665. *June 24.*

— against EDGAR.

THERE is a bond granted by one Edgar to his daughter, wherein he ties himself to pay her 4000 merks at her complete age of 18, with annualrent thereafter, she being married and provided to a jointure by her husband; and this sum falling to her after the marriage, by the decease of some of her brethren, to whom this sum was payable at their 18, and failyieing of them by decease, to accresce to the rest surviving: Thereafter her husband dying, his executors convene Edgar, son and heir to the father, to pay the sum.

ALLEGED,—That this being an heritable sum, and no particular assignation made thereof by the widow to her husband, *stante matrimonio*, they cannot have right thereto.

ANSWER,—It was moveable, for though the bond being prior to the act of Parliament 1641, was heritable, bearing annualrent after the time, yet the intervening act of Parliament made it cease to be heritable *quoad* the executors, but to stand in its own nature heritable *quoad fiscum et relictam*; and she having fallen that sum *stante matrimonio*, and before her husband's decease, there was *jus quæsitum* to the husband thereto as to a moveable sum, and so it belonged to his executors. ANSWER,—That grant the act 41 made sum moveable, *quoad* the executors, yet the subsequent act 1661 declared the husband from all benefit or right thereto, where the bonds are made to the wife, and the wife, where the bonds are made to the husband; which act is retrotracted to the year 1641. ANSWER,—The act of Parliament 1661 does not derogate to the act 1641, but only declares the estate of man and wife, after their respective deceases, in relation to bonds made to man and wife *separatim*; but this being a sum moveable fallen to the wife *stante matrimonio*, before the husband's decease, there was *jus perfecte quæsitum* to the husband, and so to his executors. Which the Lords found true.

*Act.* Sinclar and Cunyghame.

*Alt.* Lockhart.

*Advocates' MS. folio 54.*

1665. *June*

THE Lords found, that in a sentence given against a party, wherein the defender declares he shall be satisfied with the probation of one witness singly, to