

and this Earl having granted a bond of corroboration in *anno* 1642, bearing annualrent also,

No 106.

THE LORDS found, that the bond of corroboration belongs to the heir, as accessory to the principal bond, which is heritable; and the executors also concurred.

Fol. Dic. v. 1. p. 372. Gilmour, No 102. p. 78.

1671. November 22. ALEXANDER ORD *against* GRISSSEL EDMONSTON.

No 107.

JAMES and DAVID RAMSAYS being debtors to William Edmonston by bond, in the sum of 600 merks, which was a moveable bond, thereafter did grant a bond of corroboration for the said sum, and bygone annualrents, extending to 800 merks, bearing a precept of sasine, wherein there was a provision, notwithstanding, to seek payment upon the first bond, and that the last was without prejudice thereof. Thereafter, being upon death-bed, he did leave in legacy the said sum to two of his daughters; but William Ord having comprised the saids bonds from the apparent heir, did thereupon pursue the debtor, who did raise a double poinding. It was *alleged* for the legatars, That they ought to be preferred, because the first bond was unquestionably moveable, and was not innovated nor taken away by the bond of corroboration; whereby the said William had reserved to himself a faculty and power to make use thereof, which accordingly he had exercised, by leaving the same in legacy to his daughters, but did never take infestment upon the last bond. It was *answered* for the compriser, That, by the bond of corroboration bearing an obligation to infest, and precept of sasine, it made the sum heritable by act of Parliament 1641, and could not be left in legacy; likewise, the legacy did relate to the sum of 800 merks contained in the last bond, and not in the first.—THE LORDS did find the said sum to be heritable, and that it did belong to the compriser.

An heritable bond of corroboration makes the sum, in a moveable bond, heritable.

Fol. Dic. v. 1. p. 372. Gosford, MS. No 398. p. 199.

1676. February 18. WAUGH *against* JAMIESON.

No 108.

LANDS being disposed to a man by a near friend under back-bond, bearing to be for security of 2,400 merks already due, and obliging himself to denude upon payment of that sum, and of what other sums he should advance; and the disposer having thereafter granted to the same party a bond for 5,000 merks, bearing no relation to the said security, but being a simple moveable bond to him, his heirs, executors, &c.; the LORDS found, that this bond, in so far as it should be made appear to be made up of the sum mentioned in the back-bond, should belong to the heir of the trustee, because *ab initio* the said security was granted for the same, but that the residue should belong to his executors, as in its nature

No 108. moveable, and not made heritable by the back-bond; for though the disponee was not obliged to denude, unless upon payment as well of the sums he should advance, as of what was formerly due, yet this could operate no more but a bare personal retention, which *inerat de jure* without the clause.

Stair. Dirleton.

* * See this case No 21. p. 5453. and No 86. p. 5526.

1683. *January 17.* WISHART *against* NORTHESK.

No 109.

A moveable bond of corroboration does not alter the nature of the original heritable bond, but the debt still remains heritable.

See Sect. 28. *b. l.* as to the other points in this case.

ELIZABETH WISHART, relict of the deceast James Bonnar, as executrix confirmed to him, and as having right from ——— Bonnar, nearest of kin to the said James, intented action against the Earl of Northesk, for payment of a sum contained in an heritable bond, bearing an obligation to infest, and also a clause secluding executors; and also raised another action against the Laird of Morphie, for payment of a sum contained in his bond of the same tenor. There was compearance made for Miln and Bannatine, who were heirs-portioners by their mother to the defunct, and craved to be preferred to the executors, both sums being heritable. It was *replied* for the executors, That the sums were made moveable by a charge of horning. It was *duplied* for the heirs, That the clause secluding executors being the detination of the creditor, did exclude the executors, notwithstanding of the horning.—THE LORDS found, that Northesk and Morphie's bonds did belong to the heirs, notwithstanding of the charge of horning, in respect of the clause secluding executors; but they found, that the annualrent of these bonds did belong to the executors. Thereafter, it being *alleged*, that the annualrent of Morphie's bond became heritable, there being a comprising for both principal and annualrents; and it being *answered* for the executors, That after the comprising, the sums were made moveable by an arrestment at the compriser's instance, in an action to make arrested goods furthcoming; the LORDS found, that an arrestment, or an action for making arrested goods furthcoming, did not make the sums contained in the apprising moveable. The executors did insist against Keith of Craig for payment of a sum contained in an heritable bond granted to the defunct, in respect the executors *alleged*, that there was a moveable bond of corroboration granted by Keith of Craig of the said heritable bond.—THE LORDS found, that the corroboration did not alter the nature of the heritable bond, but that it remained still heritable.

March 1.—In the competition betwixt Wisharts, executors to the deceast James Bonnar, Ballantine and Miln his heirs, anent two heritable bonds granted by the Earl of Northesk and Laird Morphie, which bonds bore not only an obligation to infest, but likeways a clause secluding executors, the LORDS