

S E C T. VIII.

Incorporate Stock.

1710. July 25.

JAMES MURRAY Merchant in Edinburgh, *against* SIR ROBERT BLACKWOOD Merchant there.

No 47.

A share of the stock of the African Company found moveable, and legally carried by confirmation of the proprietor's executor-creditor, although every part of that stock was established by charter and infestment held of the Crown, and destined not to be uplifted but according to the rules of the Company.

IN the competition betwixt James Murray, who had adjudged the deceased Patrick Murray of Livingston, his share of the capital stock of the African Company, due out of the equivalent, and Sir Robert Blackwood, who, as executor-creditor to Patrick Murray, had confirmed the same; the LORDS sustained Sir Robert's confirmation, and preferred him, albeit it was *alleged* for Mr Murray, That every part of the joint stock of the African Company was originally heritable, being established by charter and infestment held of the Crown of Scotland, for payment of a hogshead of tobacco, and destined not to be uplifted nor transmitted to new proprietors but according to the rules of the Company; and therefore, no supervening change by dissolution of the Company, did alter the interest of heir or executor, or creditors adjudging or confirming, though it might render the subject arrestable or moveable.

Fol. Dic. v. I. p. 368. Forbes, p. 435.

1735. July 1.

SIR JOHN DALRYMPLE of Cowsland *against* The REPRESENTATIVES of DAME JEAN HALKET.

No 48.

Found, that the shares of the Bank of Scotland are not heritable, but simply moveable, and fall under the *jus mariti*.

TEN shares of the Old Bank of Scotland having accrued to a lady during her marriage, the question arose after her decease, whether they belonged to her heirs, executors, or husband. It was generally agreed that the executors had no claim; if the subject was moveable before the act 1661, cap. 32. it behoved to go to the husband; if heritable it continued so, for no alternative was introduced with respect to any heritable subject, save bonds bearing annualrent allenary. But for the heir it was *pleaded*, That bank-stock is a right, having *tractum futuri temporis*; the original subscription paid in is sunk into the company's stock, belongs to the company as a public body, and by no means to any of the partners; the subscriber is entitled to his proportion of the yearly dividends, and that *in perpetuum*; but as these profits are not accessory to any stock or capital belonging to the partner, it is that very thing that makes bank-stock fall under the definition of a right having *tractum futuri temporis*.—*Answered* for the hus-

band, Though the money paid in be sunk into the company's stock, yet there is thereby purchased a *jus crediti*, which is the partner's stock; just as in the case of money lent, the property of which is transferred to the borrower; and all the creditor has is the *jus crediti*, evidenced by the bond, of which the annual rents yearly arising are accessories. The profits, therefore, arising upon bank-stock are proper accessories of a principal subject, and consequently, bank-stock is nothing a-kin to a right having *tractum futuri temporis*.—THE LORDS found, That the shares of the Bank of Scotland are not heritable, but that they are simply moveable, and fall under the *jus mariti*. See APPENDIX.

Fel. Dic. v. I. p. 368.

No 48.

1791. December 23. REBECCA HOG against THOMAS HOG.

AMONG the effects which belonged to the father of Thomas and Rebecca Hog, was a large sum of money invested in the government funds, viz. the 5 per cent. annuities; and Rebecca being entitled to legitim, it became a question between her and Thomas, who was their father's universal disponee, whether those annuities should be considered as moveable, and so coming under, or as heritable, and exclusive of; that legal provision. For the former it was

Pleaded, Rights, it is true, which yield a yearly profit *per tractum temporis*, without relation to any capital sum, stock; or *sors*, are accounted heritable; but, on the other hand, annual profits which do arise from a *sors* are as certainly moveable; Erskine, b. 2. tit. 2. § 8. The point then to be determined is, Whether those government annuities are to be held as connected with a *sors*, or not.

When money is lent, its owner is instantly changed from the lender to the borrower, the former in return acquiring a *jus crediti* against the latter; who, in particular, becomes answerable to him for the yearly profits of the sum. In this case, the existence of a *sors* was never doubted. Now, let it be asked, what is that *sors*? Plainly nothing else than the *jus crediti* of the lender against the borrower.

In the same manner, upon a share being purchased in the stock or capital of any trading company, whether public or private, the price indeed ceases to be the property of the purchaser, being sunk in the company stock; but there is substituted for it a *jus crediti* against the company, including a claim to a corresponding share of such profits as may eventually result. Of this, therefore, the *jus crediti* is the *sors*; and as it comprehends the whole interest of the partner, this is of course a moveable, and not an heritable subject.

On that principle, a share of the capital stock of the African Company, due out of the equivalent, was found to be moveable; Murray *contra* Blackwood, No 47. p. 5478.

No 49.

Investments
in the govern-
ment funds
moveable.