

No 17.

quoad the nearest of kin, and to fall under executry, yet it did not thereby become so moveable as to fall either to the relict or fisk.

to fall under executry and confirmation, yet that it did not thereby become so moveable as to fall either to the relict or fisk; for a sum may be moveable *quoad* one effect, and yet not as to all other effects: And, as to the 3^d, found the moveable debts could not be solely deducted off the relict's third, but out of the hail head of such debts as she could have a share of; and that she might be heard on her objections against the constitution of these debts, if they were either illegal or collusive, and not sufficiently proved.

1694. November 2.—Scott, and Thomas Fendar her spouse, against Parks her children, reclaiming against the Lords modification of their aliment at 100 merks each, and so mean that it could not maintain them now at schools, and at bed, board, and clothes, being now come to age;—THE LORDS were stumbled, *imo*, That it was the whole annualrent of their uniferented stock, and so, without encroaching on the principal, they could modify no more; *2do*, That there was no contradictor here, the bairns being past pupillarity, and wanting curators; and so not being authorised, the Lords found they could not proceed by way of bill, but *via ordinaria* by an action; and so they neither obliged him to keep them, nor put them away, but to do as they thought fit, and give a larger allowance on their peril.

Fol. Dic. v. 1. p. 385. Fountainball, v. 1. p. 547, & 641.

1748. November 22. EXECUTORS OF CAPTAIN CRAIG *against* HIS RELICT.

No 18.

A PERSON took a bond, on the 23^d May 1744, for a certain sum, payable at the term of Martinmas thereafter, with the interest of the principal from the Whitsunday preceding, to the term of payment, and yearly thereafter during the not payment. The creditor having died before Martinmas, the question occurred between his relict and executors, whether the bond was moveable *quoad relictam*. THE LORDS found, that as neither the principal sum, nor the first term's annualrent, became payable at the time of the first creditor's death, the bond fell under the *jus relictæ*.

Fol. Dic. v. 3. p. 278. Kilkerran, D. Falconer, & Rem. Dec.

* * * See this case No 76. p. 5506.

1772. December 2.

ALEXANDER M'KENZIE, &c. *against* DEWAR and M'FARLANE.

No 19.

A process instituted, *stan- te matrimonio*, upon a bond,

NEIL CAMPBELL of Dunstaffnage, by bond of provision dated February 7. 1752, obliged himself, his heirs, &c. to provide and secure Lillias Campbell,