

not apply to it, and it is supported on the power inherent in every one, even a minor, to make a testament conveying moveables.

No. 22.

If this last was not true, very unjust consequences would follow: For, suppose a minor's estate devised to his collateral heirs male, he would not be allowed to legate one shilling to his own daughter out of his own moveable estate, however large, unless his land estate was left altogether free of moveable debts, to that collateral heir. The present reduction is in a peculiar manner inequitable, in respect the legacy was made by William Craig out of the savings of his estate.

Replied: The rule of law is general and without distinction, that no testament can prejudice either the heir's right of relief of the personal debt, or the relict and children's claims to their shares of moveables; for which the authority of Lord Stair, Lib. 3. Tit. 4. § 31. and Lib. 3. Tit. 8. § 39. and of Bankton, Lib. 3. Tit. 4. page 303. were quoted.

If the law stood otherwise, the worst consequences would follow: Any man would have no more to do but to borrow money equal to the value of his estate, and, by a testament, which he may keep lying by him for twenty years, make over his executory free of debts, which, according to the defender's doctrine, would have the effect to throw all the debts upon the land estate, and leave the executory free of any debts to the executor nominate.

The Lords found the legacy void, in respect that the minor had no free moveables to answer the legacy, after paying the moveable debts."

Act Lockhart, Dalrymple.

Alt. Ferguson, Burnett.

Fac. Coll. No. 89. p. 198.

1769. December 14.

WILLOCH against AUCHTERLONIE.

A person conveyed his heritable property to certain trustees, to be applied "in such way and manner as he had already, or should thereafter, think proper to give and bequeath by his last will and testament." He afterwards, *in liege poustie*, executed a testament, in which he appointed the trustees his executors, and declared the uses and purposes to which his estate, real and personal, should be applied. This settlement was challenged by the heir at law; chiefly upon the ground, that the purposes of a trust relative to heritage could not be declared by testament, any more than the heritage itself could be conveyed by such a deed. But the Court were of opinion, that the trust deed was an effectual conveyance of the heritable subjects mentioned therein, and that the after declaration was legally executed, in virtue of the reserved power in the trust.—Affirmed on appeal.

No. 23.

Fac. Coll.

* * This case is No. 100. p. 5539. *voce* HERITABLE and MOVEABLE.