

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.

No 49.

And the same same decision was given in respect to shares in the stock of the Bank of Scotland, Dalrymple *contra* Halket, No 48. p. 5478.

Now, if in the above-mentioned instances the *sors* was a *jus crediti*, why should not the *jus crediti* against government in the present case be less accounted a *sors*? As there seems to be no room here for any distinction, the moveable nature of the money vested in those government annuities must be admitted.

Besides, it is to be remarked, that both by the nature of these particular annuities, and by the terms of the statutes respecting them, they are moveable, and descendible to executors. *imo*, They are created in order to fund a floating debt, due by navy, victualling, and transport bills, and by ordnance debentures, which was moveable in every sense of the word. *2do*, The statute 25th George III. c. 32. § 7. declares, 'that the annuitants shall be possessed thereof as of a personal estate, not descendible to heirs.'

Answered, It is admitted, that stock in trade, or that of the public banks of this country, is moveable, but the government funds are of a very different nature. The profits of the former kinds of stock are variable, or wholly casual. The annuities in question, on the contrary, being fixed and determinate, can neither rise nor fall.

On this distinction was founded the decision relative to the shares in the stock of the Bank of Scotland. The argument employed against that judgment was, that the price being sunk in the company's stock, and, of course, the profits not being accessory to any capital belonging to the partner, his interest fell under the definition of a right having *tractum futuri temporis*. But 'the defect in the argument lay in this, that though in one sense the money might be said to be sunk in the company's stock, in so far as it could not be taken up without the general consent of the company, yet there was nothing perpetual, secure, or permanent in the annual sum to be drawn for it, which might be great in one year, small in another, and, in the event of the bankruptcy of the company, less than nothing. In short, it could be considered in no other light than the stock of any other trading company, which was altogether casual, and dependent on the success of the adventure.

'These annuities fall directly under the description of rights which have a *tractus futuri temporis*. They are of such a nature, that they cannot be at once paid or fulfilled. They are to continue for an indefinite number of years; for, till 25 millions of the 3 and 4 per cents. be paid, they are *irredeemable* even by the public. And at no period is there a right of redemption in the annuitant, who has no title to demand a supposed principal sum, which the public never pay, or any thing else than his annuity. Indeed, farther than that their amount was thereby fixed, the annuities have no relation to a capital sum or stock.'

With respect to the statute, § 7. it 'declares, *not* that the annuities shall be a personal estate, but that the annuitants shall be possessed thereof *as of* a per-

'sonal estate; and that they shall not be descendible to heirs, as *sua natura* No 49.
'they were.'

THE COURT found, That the subject in question was moveable, and fell under the right of *legitim*.

For Mr Hog, *Lord Advocate.* Alt. G. Fergusson. Clerk, Sinclair.

S. *Fol. Dic. v. 3. p. 265. Fac. Col. No 196. p. 407.*

SECT. IX.

Obligations to lay out money on heritable security.

1586. November. HAMILTON against LAMB.

THERE WAS a woman callit Hamilton that persewed ane Lamb and Gilbert Dick in Edinburgh for a certain soume, the whilk the said Lamb's father was bund and obliged in ane registrate contract to lay upon land to the weilfare of the persewar, wha was his spouse, and to the bairns gotten, or to be gotten betwixt them, and so he being aire and eldest son to his father, ought to deburse the said soume, according to the contract whereintill his father was bund.—It was *answered*, That the persewar was executrix and intromissatrix with her husband's geir, and so the aire could not be persewed, while she and her intromission were first discussed, or at the least for the one half, according to her intromission. To the whilk it was *answered*, That the bond and obligation was made upon money to be laid upon land *et sic propter destinatum usum*, whilk was in sasine of land, the money that was ordained be this bond could not be holden moveable goods or geir, *sed quasi immobile et onus hereditarium*, for the whilk it behoved the aire to be persewed, and not the executrix and intromissatrix with the moveable goods.—THE LORDS fand be interlocutor, That the aire might be convened and not the executrix.

Fol. Dic. v. 1. p. 369. Colvil, MS. p. 410.

1628. March 14. GRAHAM against FINNIE'S HEIRS.

IN an action by Graham, relict of Finnie, against the heir and executors of her husband, and also against her husband's debtors, particularly called in the summons, to hear and see the debtors decerned to pay to her the profits of cer-

No 50.

A husband became bound to employ upon land a sum to his wife. Found, that after his death this sum was due by his heir, and not by his executor. The reverse of this found, Graham against Finnie's Heirs, No 51, *infra*.

No 51.

Found, (the reverse of Hamilton against Lamb,