

No 86.

*** Dirleton in his report of this case, No 21. p. 5453. says, the LORDS came to the following resolutions, *1mo*, That it was consistent that a sum should be moveable, and yet that it should be heritably secured, as in the case of bygone annualrents due upon infeftment of annualrents, bygone feu-duties, for which real action is competent even to executors, wadsets loosed by requisition, &c. ; *2do*, That as to these qualities of moveable or heritable, in relation to succession, the *animus* of the creditor was principally to be considered ; so that if an heritable security were afterwards taken for a debt moveable *ab initio*, it is presumed the creditor intended that the sum should belong to his heirs ; *secus*, if his intention appeared to be otherwise, *v. g.* if a debtor should dispoise his estate in favour of a confident person, with the burden of his debts ; *3tio*, Bonds being taken after a general security, in the terms aforesaid, for debts to be advanced, may be moveable, notwithstanding such security, if it appear that the creditor intended it should be such ; *v. g.* if the supervenient bond should be taken to executors, secluding heirs, &c.

1683. March 6.

ROLLOCK against GRANT.

No 87.

A moveable bond, though eiked to a reversion of wadset, but not registered in the register of reversions, was found to belong to the executor.

ROLLOCK, as executor to ———, having pursued for payment of a sum due by Grant to the defunct, which bond was an ordinary bond, payable at a term, and bore this provision, That it should not be lawful to the granter, the debtor, to redeem a wadset which he had formerly granted for another sum, unless he made payment of this sum likewise, which is declared to be eiked to the reversion ; it was *alleged*, That this sum, although conceived in terms of a moveable bond, yet bearing to have been eiked to the reversion of a wadset, was heritable as the sums upon wadset.—It was *answered*, That the said bond was moveable, payable at a certain term ; and the same not being registered in the register of reversions, the nature of the bond was not altered.—THE LORDS found the foresaid bond, albeit containing an eik in the terms foresaid, remained moveable, and belonged to the executor, in regard it is none of the species of heritable bonds contained in the act 1661, cap. 32. as not secluding executors, nor bearing a clause of infeftment.

Fol. Dic. v. 1. p. 371. P. Falconer, No 55. p. 36.