

aforsaid is equivalent, as if ~~the~~ were expressly excluded. Bonds devised to one and his Heirs-male, which failing to his Sister and her Heirs-male &c. were found to be heritable and not confirmable by the Father's Executor because Executors were in Effect excluded in such Bonds, and these could only be carried by Service, which is incompatible with Confirmation of any Sort whether of nearest of Kin or Creditors January 1720 Sir Jo. Sinclair contra Gibson. But a Bond taken to a Man and his Wife in Liferent and to their Daughter existing nomination in Fee, and failing of the Daughter by Decese, to the Father his Heirs Executors or Assigns, was found to belong upon the Daughter's Death to the Executors of the Father. In Respect there is therein but one Substitution of the Father's Heirs Executors or Assigns to the Daughter the Prior 19 Feb. 1715 Stevenson and Gillon her Husband contra Children of Baillie Tife. Bygone Feudutys are distinguished by this Specificity from preceding Rents of Lands Annualrents due by Infeftment and the Bygones of other debita fundi; that preceding Feudutys are considered as heritable Debt affecting the Heir of the Vassal for which he has no Relief from the Executor 29 July 1710 Wilton of Park contra Bell and Grant Executors of Wilton of Park. Because the feudal Contract being entered into between the Superior and Vassal and their Heirs only, none but the Heirs have the Benefit of that Contract or are liable to the reciprocal Performances of personal Services or Payment of Feudutys arising from it.

Some Rights are heritable and moveable in a different Respect. So personal Bonds bearing Annualrent ~~before the~~ are moveable as to Executors, unless these be expressly excluded or the Debtor expressly obliged to pay the Creditor Act 32. Par. 1. Sect. 1. Ch. 2. But heritable as to the Heir and the Creditor's Relict. And the Reason of the Difference is because young Children have no legal provision save a Share of the Moveables, and many take Obligations for Annualrent of Money lent by them, without any Design to exclude their younger Children. Whereas such Bonds fall not under the benefit of single Escheat which is odious nor under the Relict's Share because she is presumed to be ever sufficiently provided by her Contract of Marriage. And as Wives are excluded from such Bonds granted to their Husbands: so Bonds of that Nature granted to Wives do not fall under the *ius mariti* July 1676 Hollo contra Brownley. But a Bill of Exchange due by a Wife when the Term of Payment was elapsed before her ~~marriage~~ Marriage, was tho' it bore Annualrent by Law (Act 20. Par. 3. Ch. 2.) found to be moveable, *quoad fidei commissum* or *relictum*, and to affect her Husband in Respect the Statute (Act 32. Par. 1. Sect. 1. Ch. 2.) makes only Contracts and Obligations for Sums of Money containing Causes for Payment of Annualrent and Profit heritable as to the *ius mariti* and relict, and Sums bearing Annualrent not *ex pacto* but *ex lege*, as Bills of Exchange, go always to the Heir, and Relict Jan 1725 Leslie contra Sir James Nicolson. A personal Bond bearing An-

annualrent is moveable as to all Persons till the Term of Payment or Annualrent be past Stat. Lib. 2. Tit. 1. §. 4. So that if the Debtor die before that Time, it is a moveable Debt *quoad* his Relict and the Heir, and if the Creditor die, it is simply moveable as to his Relict and the Heir 12 Feb. 1623 Wallace contra McDoual 30 June 1624 Smith contra Anderson's Relict. But the Sum becomes heritable as to the Heir, after elapsing of the first Term of Payment of Interest, tho' the Term of Payment of the principal Sum be not come 31 July 1688 Gordon contra Keith, observed by Stat. which case is wrong set down by Sir John Nisbet Dec. 39. Bonds including Executors or containing a Clause of Infeftment are heritable from the Date 20 Decemb. 1683 Gordon contra Heir of Ker observed by Newton Dec. 73. 21 July 1687 Muir contra Executors of Muir his Father. The Reason of excluding Executors being as strong then, as any Time thereafter. However an heritable Bond containing a Clause of Infeftment, is now found moveable, when the Creditor dies before the Term of Payment Feb. 1710 Fisher contra Dringale. *vid. supra* pag. 415. The Reason why a personal Bond bearing Annualrent and not excluding Executors is moveable, if the Creditor die before the Term of Payment, is because Executors not being excluded either by the Nature of the Right or by the express Declaration of the Creditor, such a Bond becomes heritable only upon its bearing Annualrent, which it doth not do till the Term of paying Annualrent. Other Things, as Heirship Moveables Sums in personal Bonds not bearing Annualrent payable to Heirs, excluding Executors and temporary Rights or Obligations for a Course of Time, *viz.* Pacts Penfions, or other annual Prestations, are moveable *quoad* the Heir, and heritable with Respect to Heirs and Executors Stat. Lib. 3. Tit. 3. §. 15. Thus one's Obligation to pay a Sum yearly after his Death, was found to be an heritable Debt affecting his Heir, and not his Executor 5 Feb. 1663 Hill contra Maxwell. Again, Bonds may be heritable as to the Creditor and his Heirs, and moveable as to the Debtor: such is a personal Bond payable to one and his Heirs, excluding Executors Stat. Lib. 2. §. 47. Because the Executor of the Creditor is barred from seeking Payment thereof, and the Debtor's Executor is liable to pay it. For albeit a Bond payable to one and his Heirs excluding Executors, was once found heritable both as to the Debtor and Creditor, yet that Point was stopp'd to be heard again, 22 Feb. 1681 Cunningham contra Lady Cardross. And a Husband being obliged to employ a Sum owing to him by a moveable Bond, upon Land or Annualrent in Favour of the Heirs of the Marriage, the Executor of the Creditor in the said moveable Bond, is obliged to assign and make it over to the Heir, altho' it remain moveable as to the Debtor 19 January 1637 Robertson contra John 25 July 1662 Nasomith contra Gaffery 19 Nov. 1691 Fleeming contra Bell Stat. Lib.