law gave the husband only right to the wife's moveables, her moveable debts being first deducted.—THE LORDS found, that the wife's moveables, that fall under the *jus mariti*, could not be burdened with the wife's debt but in a subsidiary way, the heritable estate and executry being first discust and exhausted, in regard they found the husband not liable after the wife's death for her debts, so long as there was any heritable or moveable estate belonging to her representatives, which might satisfy her debts, the *jus mariti* being equivalent to a general assignation of the wife's moveables to the husband, and which could not be quarrelled at the creditor's instance, so long as there was sufficiency of the estate for payment of her debts. Likeways, in this reduction, Leven craved that the disposition in favours of Mr Francis, by the Lady, of the half of her moveables in common betwixt them, and the discharge granted by her, with Mr Francis's consent, to Lauchlan Leslie, ratified by her upon oath while she was in death-bed, might be reduced, in regard these deeds, being done on death-bed, could only be sustained as legacies, and so could not prejudge the heir of his relief of the moveable debts.—THE LORDS reduced these deeds, in so far as they were prejudicial to the heir's relief of moveable debts, and that, notwithstanding of the ratification by the Lady upon oath, which they found only personal, but that it could not bind up her heir from quarrelling of the same. In this process there was likeways a conclusion of declarator, craving the King of Sweden's jewel foresaid to be delivered to the pursuer, in regard the deceast Earl of Leven left it to the family, with the quality, that it should not be alienate.—THE LORDS ordained that jewel to be restored back, but assoilzied Mr Francis from giving back the rest of the jewels, they being *paraphurnalia*; and found, that the Lady might dispose thereupon in favours of her husband, and that the same were not subject to the heir's relief, as other moveables were. *See* TAILZIE.—HEIRSHIP MOVEABLES.—HUSBAND AND WIFE.

No 41.

Fol. Dic. v. 1. *p.* 213. *P. Falconer, No* 54. *p.* 31.

1688. *July* 20.

ROBERT PRINGLE *against* ELIZABETH PRINGLE and RUTHERFORD.

No 42.

FOUND, that bonds secluding executors cannot be disposed upon *in lecto*, in prejudice of the heir, more than such as bear an obligement to infeft.

Fol. Dic. v. 1. *p.* 213. *Harcarse*, (LECTUS ÆGRITUDINIS.) *No* 661. *p.* 189.

1706. *July* 20. EDMONSTON *against* EDMONSTON.

No 43.
A parrty, who by a contract of marriage, was bound

THE deceased James Edmonston gives a bond of provision to Catharine, his daughter, for 5000 merks. She and Mr Steven Oliver, her husband, pursue James Edmonston, her brother, for payment.—*Alleged*, He has raised reduction

No 43.
to provide the children in a a certain sum, having granted a bond of provision on death-bed to one of them, for a sum something less than the due proportion, but making no mention of the contract of marriage, the Lords repelled the defence of death-bed, and sustained the bond of provision.

e capite lecti, his father having died shortly after granting it.—*Answered*, 1*mo*, There is a natural obligation on parents and brothers to provide their children and sisters: This is sufficient to support the bond, it being moderate and alimentary, though on death-bed; 2*do*, This has an anterior onerous cause, viz. her mother's contract of marriage, where 20,000 merks are provided to the heirs and bairns of the marriage, whereof these are only three; and so 5000 merks are less than the proportion of that sum.—*Replied*, Whatever might have been pleaded, if this bond of provision had expressly related to the contract of marriage; yet here is a simple and absolute bond without mentioning the contract; and the bond being null as *in lecto, quod nullum est nullos sortitare effectus*, and cannot be supported by a cause to which it noways relates; 2*do*, The contract of marriage is fully implemented, seeing the bairns of the same marriage gets it, he being the son and heir thereof; and it is alike if any of them enjoy the provision; seeing parents, by their power of division and distribution, may give it to any of the bairns procreate of that marriage, he not going out of that line, nor taking in bairns of another bed.—*Duplied*, When a deed on death-bed can be ascribed to a cause, *ab ante*, preceding his sickness, there law sustains the deed, though it does not expressly mention it; and it is all one as if there were a pursuit intented upon the obligement of the contract, to give her a share of the 20,000 merks, as a bairn's part of gear, being a child of the marriage; and so, without multiplying processes, may be admitted by way of reply, *ad finiendas lites*; 2*do*, Though he be the eldest son of the marriage; yet his succession is not by virtue of the contract as heir of provision, but as heir of line.—*Triplied*, Law requires things to be done *habili modo*; but here the defunct *non fecit quod potuit*, in making the bond relate to the contract and its obligement, *et fecit quod non potuit*, by granting a simple bond *tempore inhabile* when on death-bed.—THE LORDS remembered, that they had lately sustained Carnegie of Kinfaun's obligement as a sufficient exercise of his faculty and reserved power, though it bore no express relation thereto; and therefore they, in this case, repelled the reason of death-bed, and sustained the bond of provision, in respect of the antecedent obligement in the contract-matrimonial, though not mentioned therein. *See* FACULTY.

Fol. Dic. v. 1. *p.* 214. *Fountainhall, v.* 2. *p.* 344.

*** The same case is reported by Forbes, Sect. 2d, *h. t.* No 12. p. 3193.

1707. *July* 22.

JANET COWIE and MR DAVID HARDIE, her Husband, for his Interest, *against* WILLIAM BROWN of Seabegs, JANET COWIE, and Others.

No 44.
A person's moveables, notwithstand-

JOHN COWIE of Bothkenner having granted, for love and favour, to William Brown of Seabegs, Janet Cowie, and others, *respective*, a discharge and some