

No 60. law, be held a donation or gift on his part ; which, though it might be revoked by him, or reduced by his creditors ; yet, if not revoked or reduced, must stand good, and the heritable right descend to the heirs of the wife, and not to the executors of the husband.

*Observed* on the Bench ; The legacy intended by William Scot to his sisters in 1691, was plainly the foundation of this claim ; therefore the share of each of the sisters was a subject which would fall under the *jus mariti*, seeing the security granted for it came in place of the legacy, and must be regulated by the same rules. And all the future transactions show, that it was so understood, particularly the commission to Mr William Scot in 1720, which was equivalent to an obligation to pay the proportions there settled.

On the other hand, it was *observed*, That by the express terms of the contract 1695, there appeared to have been no legal claim for a legacy ; therefore the subjects ought to remain, and be regulated according to their proper nature : That the right to those debts was clearly *in hæreditate jacente* of Agnes Scot, at her death, and therefore could not transmit without a service to her, nor could the commission in 1720 dispense with the necessity of making up proper legal titles.

“ THE LORDS preferred George Fullarton pursuer, to Charles Scot defender, for the pursuer’s proportion of the sums paid by the Earl of Lauderdale to Laurence Scot of Bavelaw ; and therefore found the said Charles Scot liable for the sum of L. 217 : 7 : 6d. Sterling, being the pursuer’s proportion of the said sum uplifted from the Earl of Lauderdale.”

Act. *Aud. Pringle.*

Alt. *Montgomery.*

Clerk, *Home.*

G. C.

*Fal. Dic. v. 3. p. 267. Fac. Col. No 56. p. 91.*

1789. December 4.

No 61.

A legacy declared to be a burden on lands, can be conveyed by a testamentary deed.

MRS AMELIA LAMONT, *against* The CREDITORS of LAUCHLAN and ARCHIBALD LAMONT.

MRS GRIZEL LAMONT, to whom L. 100 had been left, made her last will and settlement, ‘ whereby she bequeathed to her sister Mrs Amelia Lamont, all goods and gear, of whatever denomination, of which she was possessed, or might be possessed at the time of her death.’

The settlement proceeds in the following words : ‘ And whereas I have reason to believe, that Lauchlan Lamont of Auchagoyle, my brother, has made a deed in favour of certain persons ; and in particular, that by the said deed he has burdened his estate with a certain legacy or sum of money to be paid by his heirs, executors, and assignees, to me, my heirs, executors, and assignees ; I therefore hereby declare, by this my last will and testament, the said Mrs Amelia Lamont, my sister, to be my sole heir, executrix, and assignee,

'reserving a power to myself to revoke this deed whenever I think proper.' This settlement was written on paper not stamped.

No 61.

After the death of the testatrix, Mrs Amelia Lamont obtained a decree of constitution against the Heirs of Archibald Lamont, who was burdened with the payment of this legacy, the sums bequeathed to her sister being included in the same decerniture with those originally due to herself. On this decret adjudication followed.

It was therefore objected by the common agent in the ranking, 1st, That considering the legacy of L. 100 as a burden on the lands, it could not be conveyed by a testamentary deed; and, 2dly, That the settlement not having been extended on stamped paper, the decreets of constitution and adjudication were ineffectual, and this not only as to the sums bequeathed by Mrs Grizel Lamont, but as to the whole, agreeably to the decision, Apparent Heir of John Porteous *contra* Sir James Nasmyth, 4th February 1784, No 43. p. 132.

Some of the Judges seemed to think, that the right of the legatee was of a moveable nature, but the majority considered it as heritable. This, however, was thought to be of little consequence, as the deed, though purporting to be a testament, contained such expressions as were deemed fully sufficient for the conveyance of a debt, which, though a burden on landed property, was transmissible by assignment. The objection arising from the writing not being stamped, was considered as one that could be removed at any time.

The cause was remitted to the Lord Ordinary, with an instruction to sist process till the deed was stamped. After this was done, the Lord Ordinary pronounced an interlocutor, repelling the objections which had been stated to the claim of Mrs Amelia Lamont. See PERSONAL and REAL.

Reporter, *Lord Justice-Clerk.* Act. *Macleod-Bannatyne.* Alt. *A. Macdonald.*  
Clerk, *Menzies.*

G. *Eol. Dic. v. 3. p. 267. Fac. Col. No 96. p. 174.*

1790. January 27. PRIMROSE YOUNG *against* CHARLES CAMPBELL.

AFTER the company of Douglas, Heron, and Company, bankers in Ayr, which stopped payment in 1772, had been declared to be dissolved, unless for the purpose of winding up the concerns, the sum of L. 500,000 was, by some of the solvent partners, raised by the sale of life-annuities, for discharging the debts of the Company.

As this method of procuring money soon appeared to be a very disadvantageous one, an act of the Legislature was obtained in 1774, authorising the redemption of the annuities. The money necessary for this purpose was to be raised on personal bonds, bearing interest, and collaterally secured by infestment on the land-estates of those partners who had applied to Parliament.

No 62.

The debts of a trading company, although constituted by bonds bearing interest, or secured on land, considered as moveable, in a question between the widow and representatives of a deceased partner.