

1692. December 20.

The HEIRS of THOMAS CRAWFORD *against* The EARL of TRAQUAIR.

THE case was, if a bond secluding executors was moveable, when the creditor died before the term of payment, either of the principal sum or annual rent. It was *alleged*, That, before the term, it was to be reputed as money lying beside the defunct in specie, in which case it would be certainly moveable; yet the LORDS found, where the defunct creditor expressly excluded executors, that it was his meaning and design, that the sum should belong to his heirs *in omnem eventum*, whether he died before or after the term; though *regulariter*, all sums are moveable before the term. This had been variously decided; but at last the Lords fixed on this, that though such a bond, secluding executors, were loosed by a charge of horning, yet it should still continue heritable.

Fol. Dic. v. 1. p. 370. Fountainball, v. 1. p. 534.

No 84.
Found in conformity with the above.

S E C T. XV.

Of Sums Moveable notwithstanding of real Security.

1631. February 3. HENDERSON *against* HENDERSON'S RELICT.

MR JOHN HENDERSON, and umquhile James his brother, being confirmed executors to their umquhile sister, in which testament James gives up a debt of L. 500, addebted by himself to the defunct, to whom he was one of the two executors confirmed; and the said James being deceased, nothing being done before his decease upon the said testament, Mr John the other executor, pursues the relict of the said James, as executor to him, to pay the said sum; who *alleging* the said sum to be heritable, and so not to come under the testament to be confirmed, except the pursuer would otherwise instruct, than by the testament, that the said sum was confirmable; the LORDS found, That this sum being given up by the executor himself, as a debt owing by him, he not making mention that he was owing it by bond, it could not be *alleged* by himself if he were living, nor now by his executors to be heritable, except that the ex-cipient would qualify, and show that it were heritable; which if she did not, the LORDS found the testament so purporting, given up by the debtor's self,

No 85.
An executor confirmed a sum in a bond. Although heritable, being given up by the executor, he was found liable.