

No 97. and particularly *Voet. cap. 7. de natura mobilium et immobilium*, that *actiones ad res immobiles tendentes pro immobilibus habentur, nam qui actionem habent, rem ipsam habere censentur, quia per eam non stat*; and *Stair, lib. 2. tit. 1. § 3.* shews that destination can *ipso facto* render a moveable sum heritable; and all know that a requisition or charge of horning makes an heritable debt moveable, and all because of the indication of the creditor's mind, even so here. *Answered*, Every incoherate act does not alter or change the nature of things, neither is it always the party's design to have his money when he raises an adjudication, but oft times it is rather to secure it: yea the declared intention of calling for a sum in a bond secluding executors by a charge of horning has been found not to make the sum moveable. See *M'Kenzie's Instit. book 2. cap. 1.* and the act 32d Parliament 1661 excepts no bonds from being moveable as to children's succeeding therein, save only bonds bearing clauses of infeftment, or expressly secluding executors. THE LORDS found the raising, executing and insisting in a process of adjudication, where the creditor died before he obtained sentence, did not alter the nature of the debt from what it was formerly, so as to render it heritable or make it fall to the heir.

*Fol. Dic. v. 1. p. 372. Fountainball, v. 2. p. 81.*

No 98.

1723. November 12. REIDS against CAMPBELL.

AN adjudication led upon a moveable bond, makes it become heritable so as not to be alienable upon death-bed. See APPENDIX.

*Fol Dic. v. 1. p. 372.*

No 99.

An apprising, and all annualrents due thereon, belong to the heir, and not to the executor.

1738. December 1. RAMSAY of Wyliccleugh against BROUNLIE.

FOUND that an apprising, and whole sums therein contained without distinction between principal sum and annualrents, accumulate sum and annualrents thereof, or accessories thereto, do belong to the heir, and no part thereof to the executor, notwithstanding the appriser died within the legal.

The question arose upon the allegation of the reverser, That the apprising was extinguished by the possession of the appriser's heir within the legal; which depended upon this, Whether the bygone annualrents at the appriser's death belonged to his executors or to his heir? If to his executors, the apprising was extinguished by the heir's possession within the legal.

It had been a received notion, that the bygone annualrents, at the appriser's death, fell to his executors, and there were several instances condescended on of confirmations of such bygones; and so much was the Court of that opinion,