

No 7.

Replied, Assignees must be understood such made *debito tempore* ; and therefore, if the bond is heritable, the defender is not an assignee in the sense thereof ; and the case of the substitution has existed.

2dly, *Pleaded* for the pursuers, Drummuir the granter disposed to his second son John a considerable land estate, under the burden of this bond ; which so being really secured, became heritable.

Answered, If the disposition to John Duff were in process, it might appear he was thereby only laid under a personal obligation ; but however, it was not in the power of the debtor in the bond to change the destination of the succession, since that depended solely on the will of the creditor.

3dly, *Pleaded* for the pursuers, Katharine had herself made this bond heritable ; by leading an adjudication against John Duff's estate of Culbin.

Answered, When Culbin's affairs went wrong, he, before any diligence, disposed his estate to trustees ; and the creditors having mostly homologated the disposition, the estate was sold ; but some of them having afterwards adjudged, those who had accepted the trust-right, amongst whom was Katharine, adjudged also by advice of the trustees, and then the whole acceded. This adjudication gave her no real right in the estate, because it was sold before with her consent, it immediately accresced to the purchaser, and was of no effect with regard to her ; and besides, she afterwards took a decret against Drummuir as representing the granter, and this behoved to make the bond moveable.

Replied, The adjudication had effect, because the trust-right was reducible by the creditors who had not acceded ; and though the estate was sold, yet, as is the case in judicial sales, the debts and *nexus* of diligence remained till payment of the price. Thus the adjudication was standing at her death, and the decret alleged on was never extracted :

THE LORDS, 10th January 1745, ' Found the bond was moveable ; and therefore transmissible by testament ; ' and this day, on a bill and answers, adhered.

Act. *W. Grant, H. Home & Graham, jun.* Alt. *Graham, sen. Lockhart & Ferguson.*
Clerk, Justice.

Fol. Dic. v. 3. p. 267. D. Falconer, v. I. p. 90.

1760. July 2.

TURNBULL against KER.

No 8.

IN a grass farm, the tenant, whose entry was at Whitsunday, became bound to pay the full half of his rent at Martinmas after his entry, ' for the half year ' immediately preceding, as expressed in the lease, and the remainder at the ' next Whitsunday, in full of the first year's rent.' The landlord died in February. THE LORDS found, That the last half year's rent, payable at the ensuing Whitsunday, belonged to his executor, and not to his heir. See APPENDIX.
Fol. Dic. v. 3. p. 266.