

No 47. right too must be made up in the person of the substitutes by a service ; and yet the creditor, or any of the substitutes, may dispose of such bond by way of testament. Neither is it in law considered as any other way heritable, but as to the form of establishing the title ; and why it ought not to be so likewise in bonds secluding executors, when once come in the person of the successor, no solid reason can be given ; for as Sir James Stewart observes, *voce* BOND HERITABLE, p. 17, *versus finem*, ‘ There is a great difference betwixt *heritable* and ‘ *moveable*, and *testible* and *intestible* ; and some subjects may befall to the heir, ‘ and be carried too by service, and yet the creditor or the substitute may test ‘ upon the same.’

*Replied* for the defender ; Were it even true, which will not be allowed, that bonds secluding executors, are in their nature moveable, and consequently conveyable by testament ; the pursuers will still be cut off by the law of death-bed : For if any moveable subject by a tailzie be appointed to go to heirs, the proprietor upon death-bed, has no more power over this moveable subject, than if heritable ; because in no case can a man prejudice his heir upon death-bed ; and this the pursuers will never get over. See February 1722, Maxwell *contra* Neilson of Barncailly, No 13. p. 3194.

‘ THE LORDS sustained the objection.’

*Fol. Dic. v. 1. p. 213. Rem. Dec. v. 1. No 53. p. 103.*

No 48.

1727. January 26. ADAMS *against* THOMSON.

A WOMAN upon death-bed granted a disposition to one of her sisters, excluding another who had a right to come in as heir portioner.—THE LORDS repelled the allegiance, that the alienation was *intra familiam*, and found the reduction on the head of death-bed relevant. See APPENDIX.

*Fol. Dic. v. 1. p. 213.*

No 49.

1733. December. CHRYSTISONS *against* KER.

A TACK for three nineteen years of the granter's whole estate done on death-bed, though alleged to be for an adequate rent, was reduced ; it being *pleaded*, That though a tack for a moderate endurance, granted upon death-bed, may subsist, as being an act of ordinary administration, a tack for three nineteen years is a *species* of alienation which cannot be granted upon death-bed. See APPENDIX.—TACK.

*Fol. Dic. v. 1. p. 115.*