No 139.

tors. It was not stipulated that he should depart from his infeftment as an heritable security for his share of the price. The transaction does not go that length; and the lands could not have been disburdened of the heritable security upon them by any disposition from the trustees to the purchasers, nor until Dr Brown's share of the price was paid up to him. He was in the same situation, in this respect, as if the lands had been sold at a judicial sale, where the heritable securities continue on the lands until the price is paid to the creditors.

THE COURT were of opinion, That the attornies of Dr Brown had not sufficient authority from their commission to change the nature of the debt from heritable to moveable; and likewise, that the transaction did not import, that the heritable security was to be given up.

THE COURT found, 'That the share of the price of Mr Cathcart's lands, in the hands of the purchasers, the raisers of the multiplepoinding, effeiring to the annualrents due in Dr Brown's heritable bond, at the time of his death, is *moveable*, and falls to the Doctor's *executors*; but that the share of the price, effeiring to the principal sum in said bond, is heritable, and falls to his heir of conquest.'

Lord Ordinary, *Hailes*. Act. *Armstrong*. Alt. *Crosbie*. Clerk, *Tait*.
Fol. Dic. v. 3. *p.* 268. *Fac. Col. No* 59. *p.* 106.

1791. *November* 30. DURIE *against* COUTTS.

No 140.

A PERSON having executed a trust-deed, conveying to the trustees his whole property; in the narrative he declares it to be his intention, that his houses, &c. should, if they thought fit, be sold, and the produce of the whole heritable and personal estate applied in the manner therein mentioned. The deed then makes over to the trustees for the use and behoof, in the *first* place of the heirs of his body, whom failing, a certain *series* of heirs, all the heritable subjects, and all and sundry debts and sums of money, heritable as well as moveable. One of the heirs to whom the right of succession devolved under this deed, having bequeathed her whole effects, real and personal, by testament, to her mother; this settlement was disputed, in so far as regarded an heritable bond for L. 2,000, which was claimed by the heir in heritage of the granter of the trust-deed. *Urged* for the mother, That the right which accrued to her was not the property of any specific effects, either heritable or moveable, but the residue of the value of an estate conveyed to trustees for certain purposes, and which, at their pleasure, they could make either heritable or moveable, being accountable only for its produce to those to whom it was destined. It surely could not be disputed, that had the trustees, before the testatrix's death, got payment of this heritable bond, it would have been validly conveyed by

No 140. her testament; it would, therefore, be most unreasonable that her succession should be regulated by such a casualty as that mentioned. THE LORDS found the heir in heritage of the trustee had right to the sum in dispute.

Fol. Dic. v. 3. p. 268.

*** See this case No 117. p. 4624.

1793. *June* 18. MARY MACEWAN *against* JANET THOMSON.

No 141.
A disposition of an heritable estate to trustees, for behoof of creditors, does not always render the moveable debts, even of those who accede, heritable.

DAVID THOMSON having been incarcerated for debt, was liberated upon granting an obligation to execute a trust-deed, conveying his whole estate, real and personal, in favour of such persons as a meeting of his creditors should appoint. Meetings were accordingly held, and a plan of trust being agreed on, a deed, framed by John Macewan, writer in Edinburgh, was in consequence executed by Thomson. It stated the farther security of his creditors, and more ready payment of their debts as its inductive cause. The trustees were authorised by it to sell the lands, and, in general, to take every necessary step for 'effectually securing my said creditors, and obtaining them payment of their 'debts.' In case of their failure by death or non-acceptance, it was declared, that the trust-right and infeftment shall stand and subsist as a security to the creditors, who may substitute other trustees in their place. It enumerated the different creditors, and the sums due to them respectively; and it provided, that this specification should not hinder any one creditor to make farther claims, nor the trustees to object to the debts admitted in the trust, or to communicate the benefit of it to creditors who might have been omitted.

The trustees took infeftment. Mr Macewan as a creditor acceded to the trust, but died, and without children, before Mr Thomson's property was sold.

In a question between Macewan's heir-at-law and his relict, the former *contended*, that the debts of acceding creditors were made heritable by the trust, and

Pleaded; When a person voluntarily puts his affairs into the hands of trustees of his own chusing, they are accountable only to him, and the right of no third party is affected. But the trust-deed now in question was executed at the request of creditors, in order to prevent them from leading separate diligences, and in favour of trustees of their appointment. The infeftment, therefore, which followed, put the creditors in the same situation as if they themselves had been infeft, or had received heritable bonds of corroboration; Erskine, b. 2. tit. 2. § 15. 6th November 1739, Murray Kinnynmound against Cathcart and Rochead, No 157. p. 5590.; 13th July 1748, Dunbar against Creditors of Brodie, No 138. p. 5591. It may be true, that Macewan, in acceding to the trust, (and indeed the same might have been said had he accepted any heritable