pressly secluded. In the former debate, another case betwixt Walker and Simpson was also cited; but none of these cases quadrate with the present in the stile of the bond, or the reason insisted on, viz. in that mentioned by Dirleton, there was a series of substitutions, and in every substitution mention of heirs, but never of executors, first nor last; whereas, in this case, the bond was taken in fee in name of a child; and failing of her, to the father, his heirs, executors, or assignees; so the money was originally the father's, designed for a provision to a child; and if that child should fail, the money was to be the father's again, his heirs, executors, or assignees; and the bond of corroboration was taken to the nearest of kin of the father *nominatim*, by the advice of the best lawyers in the kingdom for the time, who all agreed that the bond was moveable. And as to the decision betwixt Walker and Simpson, it is not found on record; and albeit bonds containing obligations to infeft are often taken to heirs and executors, which is to be interpreted *singula singulis*, the principal sum to the heir, and the annual-rent to the executors; yet the common stile of moveable bonds being to heirs and executors, and there being no evidence of the intention of the original creditor to make his sum heritable, as might be presumed from the series of substitutions in the case mentioned by Dirleton, nor any decision to favour the case of the heir, the bond ought to be found moveable. No. 34.

"The Lords found, That, by the death of Susanna, the succession of the original bond should fall to Alexander Stevenson and his executors, and not to his heir."

Fol. Dic. v. 2. p. 401. *Dalrymple, No.* 127. *p.* 177. *& No.* 134. *p.* 186.

*** Bruce's report of this case is No. 16. p. 14852. *voce* SUBSTITUTE AND CONDITIONAL INSTITUTE.

1716. *June* 15.

JAMES HAMILTON, and the CREDITORS of ORBISTON, *against* HAMILTON of Dalziel.

No. 35.
If the instituterepudiate the entail, the substitutes, who can have no title but by a service to him, must be cut out, and the succession opens to the heir of line, as if the entail had not been made.

William and James Hamiltons, elder and younger of Orbiston, having made a tailzie of the estate, dated at Cramond, and the father another thereafter, dated at the Buoy of the Nore; in the first, they reserve a faculty to alter; and that tailzie is to Orbiston younger and his heirs whatsomever; in the second, (the first branch whereof is Sir David Hamilton, who repudiated the heritage), there is a clause expressly resolutive of the right of any of the branches who should dispone any part of the estate to James Hamilton, old Orbiston's brother, or his issue, who nevertheless is heir of line to Orbiston younger, by the decease, without issue, of both father and son. But, thereafter, Orbiston elder grants a disposition of his estate in favours of Hamilton of Dalziel; and in a process of reduction thereof, *ex capite lecti*, at the instance of the said James Hamilton, in conjunction with Orbiston's creditors, it was, among other things,

No. 35. Alleged for the defender, That James the heir was excluded by the several deeds at Cramond and Buoy of Nore; 1*mo*, By that at Cramond, wherein he is passed over, and his heirs-male called next after the heirs of elder and younger Orbiston's bodies; 2*do*, By the settlement at the Buoy of the Nore, not only by instituting another, but by a positive exheredation of him and his posterity, as said is; in which case, it is the same thing whether the heir instituted repudiate or not, since, still, the heir is excluded by the clause above mentioned.

Answered for the pursuers: 1*mo*, That the first was not a subsisting deed, but totally innovated and altered by the posterior deed at the Buoy of the Nore; 2*do*, That since Sir David Hamilton, the heir instituted in the second deed, did not accept, the heir was not excluded, because the deed remained a deserted deed, and the heir of blood might, notwithstanding thereof, enter to the estate, and possess it; for, otherwise, in such a case, an estate behoved to remain in perpetual non-entry. In short the effect of repudiation by our law is, that it makes way for the heir of blood, not for the substitutes in the settlement; neither will our form of transmission by service and retour suffer it to be otherwise, since no man can be served upon a repudiation, but only upon a failure.

"The Lords found, That the heir of line, and his issue, were not excluded from the succession by the clause in the said second tailzie."

Act. *Sir Walter Pringle.* Alt. *Boswel.* Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 399. *Bruce, v.* 2. *No.* 2. *p.* 2.

1725. *January* 12. M'KAY *against* ROBERTSON.

No. 36.

Bond secluding executors descends by service in a perpetual channel of heirs, so that executors are excluded, not only at the first devolution, but for ever, till the destination be altered.

Fol. Dic. v. 2. *p.* 401. *Rem. Dec.*

*** This case is No. 47. p. 3224. *voce* DEATH-BED.

1727. *January.*

MARQUIS of CLYDESDALE *against* The EARL of DUNDONALD.

No. 37.

A charter proceeding upon a resignation *in favorem*, the grant whereof was to the resigner, *et hæredibus quibuscunque, hæredes quicunque* were interpreted to be the heirs of the former investitures, which, in this case, happened to be heirs-male.

Fol. Dic. v. 2. *p.* 401. *Rem. Dec.*

*** This case is No. 3. p. 1262. *voce* BASE INFEFTMENT.