of these rules, both the subjects in question belong to the respondent; and if the petitioner is in a worse case than if the lands had been set, it does not vary the argument, since it will sometimes happen that executors will lose, sometimes that they will gain, by land being in the natural possession. No 6.

THE LORDS adhered.

Act. *W. Grant.* Alt. *H. Home.* Clerk, *Forbes.*

It was thought by some of the Lords, That the grass being a moveable subject, and poindable, belonged to the executor whenever sown.

D. Falconer, v. 1. p. 19.

1745. *June* 5. DUFFS *against* DUFF.

No 7.
A bond granted to a person and his heirs and assignees, failing whom, to a series of heirs *nominatim*, was found moveable in the creditor's person, and transmissible by him on death-bed.

ALEXANDER DUFF of Drummuir gave a bond of provision of L. 500 Sterling to Katharine his daughter, payable the first term after his death, in these terms: 'To Katharine Duff, or the heirs of her body, or her assignees *respective*; 'which failing, to fall in and accresce in manner after-mentioned;' which manner was, That if she happened to decease without heirs of her body, or without uplifting or disposing of the provision, 'He willed, ordained, and appointed the same to fall in and return to the heirs-male of the body of Robert 'Duff younger of Drummuir, his eldest son, and to John and William Duffs 'his sons.'

Katharine having no children, disponed the bond on death-bed to William Duff of Kilmuir, for uses expressed in the disposition; and a reduction on the head of death-bed being brought by Archibald the son of Robert Duff of Drummuir, and Alexander son of John Duff of Culbin, it was *pleaded* for the pursuers, That the bond was heritable *destinatione*, and not assignable on death-bed; that the proper way to make up titles to it was a service, and the pursuers were served heirs of provision; from which it appeared it could not be transmitted by testament, nor consequently on death-bed.

Answered, There was in this case no substitution, but a conditional institution, in case Katharine should not uplift nor dispose of the money; and if the case had happened, the pursuers needed no service; but the case had not happened, she having disposed of it to the defender, who became thereby her assignee, in whose favour the bond was granted.

In the next place, taking it for a proper substitution, that does not make the bond heritable, since such are only bonds secluding executors, or having a clause of infeftment; but bonds containing substitutions are moveable, so far as to be transmissible by testament.

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.

2*dly*, *Pleaded* for the pursuers, Drummuir the granter disponed 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.

3*dly*, *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, disponed 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 decreet 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 decreet 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.* 1. *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.