the titles in his person, in the form and manner prescribed by the laws of Scotland, as a *fidei-commiss.* upon the heir, to denude thereof, in favour of that party for whose behoof it was intended. No 43.

Replied; The general rule founded on by the pursuers, does only hold in so far as respects personal contracts or obligations, or the transmission of moveables; for, as to the transmission of heritage, it is a rule established not only by the laws of this country, but of every other country known to the defender, that the transmission thereof must be regulated by the laws of the country where the subjects is situated. And so it was determined, 9th December 1623, Hendersons against Murray, No 40. p. 4481.; 3d July 1634, Melvil against Drummond, No 41. p. 4483.—If the deed is not probative by the law of Scotland; or, if the forms required by the law of Scotland, in the transmission of heritage, are not observed, the deed can have no effect, although it were formal and probative by the laws of the country where the deed was executed; and, in like manner, if any relevant ground of challenge did lie against the deed by the law of the country where the subject is situated, such ground of challenge will strike against the deed, although no such challenge did lie by the laws of the country where the deed was executed. Thus, for example, if a man living in England, should, on death-bed, dispone his heritage situated in Scotland, such disposition would be clearly reducible *ex capite lecti*; and so it was determined, both by this Court and the House of Peers, in the late question between the Earl of Morton and his brother. For the same reason, a testament, executed in England, would not be available to carry heritage in Scotland; and, therefore, although the deed in question were to be considered as a testament duly executed and signed by the testator himself; yet it can have no effect to carry heritable subjects situated in Scotland. It is not sufficient to say, that such was the will of the defunct. Will and intention, when not properly carried into execution, can have no effect.

THE COURT 'found, that the deed libelled on is not sufficient to convey heritable subjects situated within Scotland.'

Reporter, *Hailes.* Act. *Dean of Faculty.* Alt. *R. M'Queen.* Clerk, *Campbell.*
Fol. Dic. v. 3. *p.* 225. *Fac. Col. No* 100. *p.* 258.

No 44.
Heritable property cannot be conveyed by a testament executed in England, altho' it would there have been effectual for that purpose.

1795. *June* 10.

JOHN HENDERSON, acting Trustee and Executor of William Crichton, and Others, *against* CHARLES SELKRIG, Trustee for the Creditors of Alexander Crichton.

PATRICK CRICHTON executed a settlement of the lands of Newington, in favour of his sons, William and Alexander, 'equally betwixt them, and the 'heirs whatsoever of their bodies; and failing any one of them by decease, to

No 44. ' the surviver of his said two sons, and to the surviver's heirs and assignees ' whatsoever.'

The sons made up titles under this settlement, and the destination being simple, each was unlimited liar of his own half.

William settled in London, and died in 1782, without lawful issue.

He left a will in the following terms:

' The last will and testament of me William Crichton of Brabant Court, ' Philpot-lane, London, merchant. I will and desire that all my estate and ' effects, as well real as personal, (not placed out at the time of my death on ' such securities as my executors shall approve of), be sold and disposed of, ' collected and got in, and turned into money; and for that purpose, I give all ' my real estates in Scotland to my brother Alexander Crichton of Edinburgh, ' and his heirs, in trust, to be sold together or in parcels, for the best price or ' prices he or they can reasonably get for the same; and I give all other the ' real estates of which I am seised in fee, by way of mortgage, to Mrs Priscilla ' Warricker of Baddow, in the county of Essex, widow; and John Hender- ' son of Mitre Court, Milk Street, London, merchant, and their heirs in ' trust,' &c.

This deed, it was admitted, was a valid conveyance of landed property in England; but Alexander, conceiving that it could not have that effect in this country, refused to accept the trust, and made up titles to William's half of the lands of Newington as heir of provision under his father's settlement.

Alexander Crichton having become bankrupt, he, *inter alia*, disponed the lands of Newington to Charles Selkrig, for behoof of his creditors.

John Henderson, acting trustee and executor under William Crichton's will, and his residuary legatees, brought an action against Mr Selkrig, concluding, that he should be ordained to denude of William Crichton's half of the lands in their favour; and,

Pleaded; 1*st*, The settlement in question, it is admitted, would be sufficient for the conveyance of heritage in England. And it would be unjust, that a person, by residing abroad, where there is not a *copia peritorum*, should, on that account, lose the power of disposing of his property. Accordingly, with respect to every personal subject, foreign deeds are equally effectual as if they were executed agreeably to our own forms; and effect is also given to deeds, binding the granter to convey heritage in this country, if framed agreeably to the laws of the country where they are executed. Now William Crichton's settlement, although an actual conveyance, cannot be less effectual than an obligation to convey, which, both in law and good sense, it must be held to imply; Stair, b. 3. t. 4. § 2.

2*dly*, The settlement, in the clause conveying the lands, makes use of the word ' give,' which of itself must render the grant effectual, as it is understood, that heritage may be conveyed by a testamentary deed, provided the granter use the dispositive words, ' give, grant, or dispone,' in place of, ' legate or be-

'queath;' Erskine, p. 552.; Stair, 31st January 1667, Henderson against Henderson, *voce* TESTAMENT; 21st November 1759, Mitchel against Wright, *voce* LEGACY. No 44.

Answered; 1*st*, Personal contracts, or even obligations to convey heritage in Scotland, which are executed abroad, and according to the forms there established, may be effectual; but the deed in question, which was altogether dependent on the will of the granter, laid him under no obligation; and his heirs can as little be bound by it, unless it be good as an actual settlement of heritage, to the validity of which it is essential, that it be completed according to the rules of our own law; Erskine, b. 3. t. 2. § 40.

2*dly*, It may be true that a testament, and a conveyance of heritage, may at present be written on the same piece of paper. But the latter always requires *verba de presenti*, importing an immediate alienation of the property, 4th December 1735, Brand, *voce* TESTAMENT; although such alienation may indeed be so qualified by clauses declaring the deed revocable, dispensing with the delivery, &c. as in effect to leave it no further operation than a testamentary deed. But the will in question is a mere declaration of what the testator desired to be done, not 'at its date,' but 'after his death.' The clause in which the word 'give' occurs, is not a separate and independent conveyance of his Scotch heritage. The settlement begins with testamentary words, declaring the testator's will respecting his whole estate, real and personal; and 'for that 'purpose,' that is, to render his will more easily effectual as to his heritage in Scotland, he 'gives' it in trust to Alexander Crichton. This clause, therefore, so far from being distinct from the testamentary part of the deed, is inserted for the sole purpose of facilitating its execution.

THE LORDS assoilzied the defender.

A reclaiming petition was refused (7th July 1795) on the general point; but it having been there urged, that since Alexander Crichton refused to implement his brother's will, he was bound to restore a legacy which had been left him by it, the COURT remitted that branch of the cause to the Lord Ordinary.

Lord Ordinary, *Dreghorn.* Act. *Maconochie.* Alt. *Jo. Clerk.* Clerk, *Menzies.*

R. D. *Fol. Dic. v.* 3. *p.* 225. *Fac. Col. No* 174. *p.* 410.

1795. *December* 9.

The CREDITORS of William Robertson, *against* The DISPONEES of Janet Mason. No 45.

Heritable property in Scotland cannot be conveyed by a testament executed in England and in the English form.

ALEXANDER ROBERTSON of London, vintner, was married to Janet Mason, daughter of William Mason, nurseryman at Dalry near Edinburgh. It does not appear that any contract was entered into, or any fortune given with her, on the marriage.

In 1772, William Mason executed a disposition, in which, upon a narrative 'of the love, favour, and affection, which he had and bore to Janet Mason