

*Answered*; Though the deed be not formal, with clauses for conveying heritage, it implies an obligation on the defunct, which his heir cannot quarrel. *2do*, That the word was industriously inserted, is cleared from a posterior clause, whereby the defunct provides the fee of a shop to the heir, and the liferent of it to his wife, and *exceptio firmat regulam*; for that had been superfluous, had the defunct intended to leave all his heritage to his heir. *3tio*, These words, 'the time of his decease,' import no testamentary act, but are usual in deeds *inter vivos*, whereby the effect of the obligation is only suspended till then.

"THE LORDS restricted the assignation to the moveable estate, and a liferent of the shop."

*Harcarse*, (ASSIGNATION.) No 519. p. 23.

No 7.

1688. July 19. SIR WILLIAM SCOT *against* WILLIAM NISBET.

THE case of Sir William Scot of Harden and his Lady, against William Nisbet of Dirleton, was reported by Stair, (Justice-Clerk,) whether Sir John Nisbet's disposition of all debts, bonds, obligations, and sums of money contained in an inventory, was taxative, or demonstrative, so as to reach and carry the money lying beside him the time of his decease.—THE LORDS found that it did not extend thereto; so the money, which was about 10,000 merks, fell to his daughter as his heir of line, nearest of kin and executor. Then she claimed the bygone rents in the tenants hands, unuplifted or not discharged by him before his death, on this ground, that in a former disposition he had expressed this, and having omitted them here, it must be presumed to be *de industria*, seeing so eminent a lawyer knew the import of these clauses. This being also reported on the 27th July, the LORDS found these rents fell under the general words of debts inserted in the disposition, and so belonged to William Nisbet, the heir of tailzie. Then they debated that she getting the moveables ought to pay the funeral charges, as was found in the Dutchess of Lauderdale's case.\*—*Answered*, William's disposition was burdened with the debt.—*Replied*, That must be understood only *in suo ordine* after discussing of the moveables.

*Fol. Dic. v. 1. p. 339. Fountainball, v. 1. p. 512.*

No 8.  
A disposition of all debts, bonds, obligations, and sums of money contained in an inventory, found not to carry money in the repositories of the deceast. Arrears of rent found to be comprehended under the word *debts*.

1697. February 25. MORISON *against* NISBET, and HARDEN.

WILLIAM NISBET of Dirleton granted bond to Dame Jean Morison, his predecessor's Lady, for the sum of 40,000 merks; and after her decease, they entered into a new transaction, by which he gets up the former bond, and grants her a new one for 30,000 merks. She likewise deceasing, the right of this bond falls to William Morison of Prestongrange, her brother; and he craving pay-

No 9.  
A general disposition of moveables was found not to comprehend a bond granted to the dis-

No 9.  
 poner's wife,  
 without his  
 knowledge,  
 to procure  
 her assistance  
 in influencing  
 her husband  
 to settle his  
 estate on the  
 granter of the  
 bond.

ment, Dirleton suspends on double pointing, that he was not only distressed by him, but likewise by Dame Jean Nisbet, as nearest of kin to Sir John, and Sir William Scot of Harden, her husband. And they falling to debate their several interests in this bond, the Lady Harden claimed it, as executor to her father, in so far as this bond came in place of one granted to her father's Lady, in his lifetime, and so accresced to him, being not only presumed to be his, but likewise known to be given as a gratuity to influence the tailzie and succession of his estate from Nisbet of Dean to this William who now enjoys it.—*Answered* for Prestongrange, He opposed the bond in his sister's name; and *esto* it had been *surrogatum*, in place of one granted to her *stante matrimonio*, and before her husband's decease, yet he founded on two dispositions, granted by the said Sir John to this Dirleton, whereby he assigned him to all bonds, debts, and sums of money, any way belonging to him at the time of his decease; but *ita est*, on Harden's supposition, this bond fell to Sir John, and was his at the said time; *ergo*, I must have right to it, because my sister and I have all the right this Dirleton had, and being come in his place, may propone whatever he could say.—*Replied*, It cannot be carried by the first disposition, because that relates only to such bonds as he left contained in a list or inventory of his debts, whereof this was none; and it was as little comprehended in the second disposition, because, though that related to no inventory, yet it bore an obligation on Dirleton to tailzie all the sums disposed in the same way as the lands were tailzied, which restrained him from giving any such bond to the Lady; besides, *nemo fertur ad incognita*; he could never mean this bond which he knew nothing of, but was given as a secret gratification concealed from him. And yet the law, *l. 51. D. de donat. inter vir. et uxor.* makes all such purchases of wives devolve to their husbands, *ad evitandam turpis quæstus suspicionem*.—THE LORDS found this bond comprehended under none of these dispositions, and therefore preferred the Lady Harden, as executor to her father, to the right of this sum. Prestongrange appealed to the Parliament,

Then *alleged*, That in so far as it was onerous, it ought to subsist; and they offered to prove it was not only granted on the account foresaid, but also for her entertainment of the family till the next term, and for the expense of her mournings, &c. of which the Lords were to consider after he had given in his condescence on the particulars; but the interjecting the foresaid appeal put a stop; though in law such protestations are not to be admitted but against definitive sentences terminating the whole cause.

*Fol. Dic. v. 1. p. 340. Fountainball, v. 1. p. 771.*

No 10.  
 Found, that  
 the words  
 "goods and

1699. December 1. MR WILLIAM HENDERSON against JANET BEER.

By contract of marriage betwixt John Beer and Janet Henderson, the husband is obliged to secure all lands, heritages, annualrents, wadsets, sums of