

No 27.

words, it must limit an obligation within the words, which, without intention, are not effectual in law. "THE LORDS sustained the defence, and assolized."

Sel. Dec. No 31. p. 34.

1758. November 17.

WINIFRED JOHNSTON, Relict of John Wilson, Officer of Excise at Dumfries,
against MARY WILSON, Sister and Executrix of the said John Wilson.

No 28.

Found, that ready money lying in the defunct's custody at his death, was not to be considered as comprehended under a disposition of his goods, gear, and household plenishing.

JOHN WILSON, in 1751, executed a settlement of his affairs, whereby he disposed to Mary Wilson, his sister, a tenement of houses, and assigned her "in and to all and sundry goods, gear, debts, and sums of money, gold and silver, coined or uncoined, which then pertained and belonged to him, or which should pertain and belong to him, or be owing by whatsoever person or persons at the time of his death."

In 1752, John Wilson married Winifred Johnston, and by the contract between them, became bound to pay her a yearly annuity of L. 32 Sterling; and likewise disposed to her the half of his household-plenishing, in case there should be no children procreated between them, and the third part thereof in case there should be a child or children.

Of this marriage a son was born, but died soon after; and in October 1753, John Wilson executed a deed, proceeding on the recital of his settlement 1751, and of his marriage-contract 1752, and narrating, "That it had pleased God to call away, by death, the only son procreated of the marriage; so that the right and interest falling to his wife in his household-furniture, in all probability would be confined to one-third part thereof; therefore, and for the love, favour, and affection he bore to her his well-beloved spouse, he thereby assigned and disposed to her his whole moveable goods and gear, and household-plenishing, of whatever nature or species the same be of, which should pertain and belong to him at his death."

At Wilson's death, which happened soon after executing this last deed, there was found in his cabinet L. 25 : 19s. Sterling in cash; which was intromitted with by Mary Wilson, the sister, and general disponee and executrix of the defunct.

Winifred Johnston the relict brought a process against Mary Wilson for payment of the said sum, as conveyed to her by the foresaid disposition 1753 of the defunct's whole moveable goods and gear, and household-plenishing.

Pleaded for the defender; It is a certain rule, That in all settlements of succession, words must receive such a construction as shall appear from the scope of the deed to have been put upon them by the testator, his will being in such cases the governing rule. Here it appears from the narrative of the deed 1753, that the reason of executing it was to obviate a doubt which might arise as to the wife's share of the household-furniture, in the event which had happened,

of a child's being born, but predeceasing the father; and therefore he could only mean to assign to her the whole household-furniture, or other *corpora* belonging to him. As goods and gear does not comprehend lent money, or *nomina debitorum*, neither could such words be meant to extend to ready cash, which possibly might have been lent out, but accidentally returned, and in the testator's custody at his death, and of the extent whereof he could have no determined notion at the time of executing this deed. In l. 92. § 1. D. De leg. 3. the *pecunia numerata* and *instrumenta debitorum* are put upon the same footing. Moreover the deed 1753 and the deed 1751 are here to be taken as one entire settlement; and in the deed 1751, the defunct expressly assigned to the defender, not only "his whole goods and gear, but debts, sums of money, gold and silver, coined or uncoined, which should pertain to him;" and when he had thus explicitly conveyed to the defender his whole money, it will not be presumed, that he meant to recal or alter that settlement by a subsequent deed, which can admit of a construction agreeable to the said settlement.

Answered for the pursuer; It is established in law, That the dispositive words of a latter-will or testament ought not to be limited by the inductive clause recited in the deed, because no testator is obliged to express the motives of his will; and although he may have expressed only one motive, yet he might have had others which he did not think fit to express. It is likewise clear, that here the testator went beyond the solution of the doubt which is said to have been the motive for his executing the deed, as he not only disposed to his wife the whole household-furniture, but also his "whole moveable goods and gear;" which words are allowed to comprehend body-cloaths, arms, books, and other *corpora*, though no part of household-furniture; and further, in the narrative of the deed itself, he sets forth an additional motive, viz. "love, favour, and affection," which was surely broad enough to support a disposition of his whole moveable estate to his wife. It is admitted, that debts, or *nomina debitorum*, do not fall under the words "moveable goods and gear," even with the addition of "whatever nature or species the same be of;" but cash lying by the testator does so, as nothing can more properly be called "a man's gear," than the ready money in his cabinet. It matters not that he could not exactly foresee its extent, as that must be the case wherever a man legates or conveys an *universitas* of any kind, and the legacy of his whole moveable goods or *corpora* could not be more certainly estimated before his death, than that of his ready cash. And as to the mention in the deed 1751, of "gold and silver, coined and uncoined," it is plainly an unnecessary tautology, and his omitting to repeat them in the deed 1753, is no good reason for refusing to give the words that he did use their full and legal interpretation.

"THE LORDS found, That the pursuer had no right to the money lying by her deceased husband at the time of his death."

Act. Miller.

Alt. Macqueen.

D. R.

Fol. Dic. v. 4. p. 117. Fac. Col. No 135. p. 250.