

repudiating or entering into possession, he and his representatives would be liable, contrary to all principles; it being with us a general rule in equity, as well as in strict law, that no heir can be burdened with the debts of his ancestor, unless in consequence of some deed of his own by which he subjects himself.

No. 18.

*Sel. Dec. No. 63. p. 83.*

## SECT. III.

## General Disponee.

1718. July.

GRANT against GRANT.

OCCURRED in a process, whether a general disposition was a sufficient title without any thing done upon it, to carry an heritable subject, such as a bond secluding executors? It was contended not to be sufficient more than a general disposition of moveables, because it is destructive to creditors, that a representative should be liable no further than *in valore*, and at the same time no check upon him to ascertain the extent of his intromissions. Answered, Our law has gone farther to secure creditors than perhaps the law of any other country, but there is nothing of human composition absolutely free of defects. It has always been held that a general disposition is equivalent to a general service, and this must obtain, till a new law be made, whatever inconveniences it be attended with. The Lords sustained the general disposition. See APPENDIX.

No. 19.

*Fol. Dic. v. 2. p. 368.*

1784. February 19. ROBERT RICHARDSON against ARCHIBALD SHIELLS.

ALEXANDER ORR had become bound to dispose certain lands, but died before fulfilling that obligation, though after a bond had been granted to him for the price. His eldest son, who was his universal disponee, possessed the lands for some years. He then obtained a sequestration, in terms of the statute 1772, of the effects belonging to himself and to his father.

Afterwards Archibald Shiells, a creditor of the father, expedes a confirmation, as executor-creditor, and gave up in inventory the bond above mentioned; when a competition ensued between him and Mr. Richardson, the factor under the sequestration.

Pleaded for Mr. Richardson: It is no longer an invariable rule, that the transmission of moveable effects from the dead to the living is perfected by confirma-

No. 20.  
The property established by the possession of a general disponee unconfirmed; is limited to the subjects possessed.

No. 20.

tion alone. Either a partial confirmation, 24th January, 1745, Creditors of Mr. Hugh Murray, No. 89. p. 3202.; the possession of moveables, 3d February, 1744, Children of Baird *contra* Gray, No. 37. p. 14393.; the renewal of bonds, or other vouchers of debt due to the predecessor, 10th February, 1751, Spence *contra* The Creditors of Alcorn, No. 37. p. 14399.; the receiving payments or granting discharges; or, in a word, any act whereby the successors in the moveable estate, whether nearest in kin, or general disponees, signify a resolution to undertake a representation of the deceased, 10th March, 1769, Pringle *contra* Veitch, *infra*, *h. t.* is effectual to establish in them the whole executry-funds. By the general disposition, therefore, followed by possession of the lands for which the bond was granted, the sums in question were completely transferred to the general donee, and fell of consequence under the sequestration of his effects.

Answered for the Executor-creditor: The nearest in kin, or a general donee, may indeed, without confirmation, acquire the property of particular subjects, in consequence of attaining possession; and it may therefore be here admitted, that after payment, or a renewal of the bond in favour of the son, the creditors of the father could no longer attach it as *in bonis* of their debtor. This mode of transference, however, is not, like that by confirmation, universal in its nature; the act of possession being at the same time the foundation of the acquisition and the measure of its extent. The fund in dispute therefore must still be viewed as the property of the defunct; for the possession of the lands, which could not be attained in virtue of a disposition to the moveable estate, is altogether out of the question.

Mr. Richardson likewise endeavoured to found an argument on the terms of the sequestration, which related as well to the effects of Alexander Orr, the father, as to those of the son. But the Court were clearly of opinion, that a sequestration, in pursuance of the bankrupt statutes, was an inept diligence for attaching the estate of a person deceased. It was likewise observed, that in order to bring this debt under the sequestration, the factor, as in the right of Alexander Orr, junior, should have used a confirmation *qua* donee, or should have obtained a corroborative obligation from the debtor.

The Lords: "preferred Archibald Shiells, in virtue of his confirmation."

Lord Ordinary, *Kennet.*

For Mr. Richardson, *Lord Advocate Campbell, Wight.*

For Archibald Shiells, *Baillie, Honeyman.*

Clerk, *Home.*

C.

*Fol. Dic. v. 4. p. 268. Fac. Coll. No. 147. p. 229.*

1784. July 20.

JAMES BUCHANAN and JOHN AULD, *against* ADAM GRANT,

No. 21.  
Payments to  
the creditors  
of a person

A TRADING Company, of which Adam Grant was the managing partner, being indebted to William Galdie, deceased, in the sum of £1219 Sterling; George