

No. 4.

Lit. 259; Act 22. et 23. Car. II. C. 10; 1. Jac. II. C. 17. § 7; Green versus Howard, Hilary Term, 1779; Pickering versus Stamford, August 2, 1797. Vesey junior Reports. Farther, the settlement of James Stewart can only be understood to dispose of what was his own property; but the funds here in *media* never were vested in him, and did not devolve upon his family till many years after his death. The terms of his will likewise shew, that he was disposing merely of his own effects, and had no contemplation of this eventual legacy. See PROVISION TO HEIRS AND CHILDREN, Sect. 5, et seq.

The Lord Ordinary reported the cause, and the Court unanimously sustained the claims of the younger children.

Lord Ordinary, *Methven.* For Eldest Son, *Connell.* Agent, *Ja. Robertson, W. S.*
 Alt. *Williamson.* Agent, *Geq. Andrew.* Clerk, *Gordon.*

Fac. Coll. No. 42. p. 86.

1805. *December 3.* BROWN against HENDERSON.

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ANDREW HENDERSON, schoolmaster in Kilmarnock, on the 12th of June 1799, executed a disposition and deed of settlement, by which " he disposed, conveyed, and made over, to and in favour of Janet Brown my spouse, in the event of her surviving me, in liferent, during all the days of her life, for her life-rent use allenary, and to and in favour of Andrew and William Henderson, my sons, equally between them, share and share alike, in fee and property, their heirs or assignees, not only all and sundry goods, gear and debts, sums of money, household furniture, bed and body clothes, and whole other moveable effects whatsoever, pertaining and belonging, or due and addebted to me at the time of death, with the whole rights, title deeds and securities of said heritable and moveable subjects, grounds and instructions thereof, and whole clauses therein contained, with all that has followed or may follow thereon, and particularly without prejudice to the generality foresaid, all and whole that lot of ground at the Braehead of Kilmarnock, measuring," &c.

A general conveyance of " all debts," does not convey debts secured by infertment.

Janet Brown, the widow, and William Henderson, the youngest son, contended, that two heritable bonds for £.500 and £.150, upon which infertment had been taken, were comprehended under this settlement, while the eldest son Andrew insisted he was entitled to succeed to them as heir-at-law.

The case was reported to the Court; and the pursuers Pleaded: The intention of the testator, which is the only rule for explaining ambiguous expressions, was clearly to make a general settlement of his whole fortune; and it is perfectly plain, that he understood he had conveyed all his heritable as well as his moveable funds. Thus, after mentioning the moveable

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debts, sums of money, &c. due and addebted to him at the time of his death, he adds, "with the whole rights, title deeds, and securities of said heritable and moveable subjects." An heritable security is a mere accessory of the debt secured, as much as an adjudication is of the debt on which it is led; 28th Feb. 1751, Wilson against Burrel, No. 18. p. 40. therefore the term *debts*, includes the sums in question, although lent on heritable bonds; and a general disposition is as effectual as the most particular and explicit can be; 26th Jan. 1770, Brown against Bower, No. 19. p. 5440.

Answered: The words used in the conveyance of heritable subjects, must be directly applicable to the subjects meant to be conveyed; and no other words, however clear the intention of the testator may be, can have the effect. A deed executed in a foreign country, according to the forms of that country, will not convey heritage in Scotland; 10th June 1795, Henderson against Selkirk, No. 44. p. 4489. Even moveables, in the construction of a settlement, have been distinguished from debts; 9th July 1776, Fraser against Smith, No. 2. *supra*; 14th May 1795, Earl of Fife against Mackenzie, No. 61. p. 2325. The word *debts*, can carry nothing but what is personal, and cannot possibly convey right secured by infeftment; 2d March 1770, Ross against Ross, No. 15. p. 5019; 13th February 1789, Waddel against Colt, No. 16. p. 5022; 12th January 1802, Galloway, Petitioner, No. 30. p. 15950.

The Court (8th February 1805) sustained the defences; and upon advising a reclaiming petition, with answers, "adhered."

Lord Ordinary, Craig.
Alt. Cashcart.

Act. G. J. Bell.
Agent, W. Wallace Brown.

Agent, Thomas Darling.
Clerk, Pringle.

F.

Fac. Coll. No. 225. p. 512.

1807. January 28. WALLACE against WALLACES.

No. 6.

Form of words necessary to vest succession in legatees, so as to transmit to their representatives.

ALEXANDER HOUSTON, banker in Edinburgh, executed a trust-disposition and settlement of his whole fortune, heritable and moveable, in favour of certain trustees, which bore, that "after payment of such debts as I may be owing, and after the decease of the longest liver of me and my said spouse, I hereby appoint my said trustees to content and pay, or assign and make over to the persons after named, the respective sums of money after specified, viz. To Alexander Wallace, banker in Edinburgh, my nephew, the sum of £1000. Sterling, and to Houston Wallace, son of the said Alexander Wallace, as my nameson, the like sum of £1000 Sterling, over and above his share of my effects as after mentioned; and after the payment of these and of any other legacies I may hereafter happen to bequeath to any person or persons, by a writing under my hand; and also after payment of all expenses that may be incurred in the execution of the trust, I appoint the residue of my means and effects, heritable and