No. 25. The Lords affirmed the judgment of the Lord Ordinary, which found, "That George Robertson had right to the sums in question, in virtue of the settlement made by his father."

Lord Ordinary, *Kennet.* For John Robertson, *Robertson.* For George Robertson, *E. Armstrong.* Clerk, *Robertson.*

Fac. Coll. No. 210. *p.* 329.

1786. *February* 1.

MARGARET and MARY MACRA, *against* The PRINCIPAL of the COLLEGE of ABERDEEN, and Others.

No. 26.
The mortmain statute of 9th Geo. 2. C. 36. does not extend to settlements made in Scotland, with regard to money invested in the British funds.

Alexander Macra, a native of Scotland, executed a deed in this country, whereby he disponed his effects, consisting of monies invested in the public funds, to the Principal of the College of Aberdeen, and others, as trustees.

His chief object was, to provide a fund for the maintenance and education of poor children of the name of Macra. And by the settlement, in which he reserved to himself a power of altering, the trustees were directed to dispose of his effects, and to lay out the proceeds in purchasing land in Scotland.

Margaret and Mary Macra, his sisters, and nearest in kin, insisted, after his death, in an action, for setting aside this settlement. In particular, they contended, That it fell under the 9th act Geo. II. C. 36. and

Pleaded: To prevent conveyances of property in mortmain, which are so incompatible with the interests of a commercial nation, and at the same time so injurious to the kindred of those who choose in this manner to dispose of possessions which they can no longer enjoy, it has been provided, "that no alienation of land, or transference of personal estate, or of money in the public funds, for uses called charitable uses, should be validly made, unless the granter be thereby irrevocably divested, in the case of real property, twelve months, and with regard to other effects, six months prior to his death."

It was indeed at the same time declared, "That nothing in the act contained should extend, or be construed to extend to the disposition, grant, or settlement, of any estate, real or personal, *lying* or *being* within that part of Britain called Scotland." But this tends rather to strengthen than to invalidate the pursuer's plea. The framers of the law must have understood, that its operation, without such a clause, was not to be confined to England alone; and the exception being restricted to effects locally situated in Scotland, the enactment here must have its full effect, agreeably to the rule, *Exceptio firmat regulam, in casibus non exceptis.*

Answered: The statute of the late King was only intended to regulate the proceedings of Englishmen with regard to effects situate in their native country; Bankton, B. 4. Tit. 1. § 16. The expressions it uses, such as "manors, advowsons, hereditaments, &c. are purely English. The methods too of authenticating the settlements by "deeds indented, signed, and sealed," are peculiar to

that nation; and the necessity of recording them in the English Court of Chancery never could be intended to be imposed on persons having their residence where that Court possessed no authority. No. 26.

To extend the enactment to the effects of foreigners, because locally situate in England, would diminish the value of our national funds, without adding to our commerce. Nor can the efficacy of deeds made in Scotland, especially by a Scotsman, and conveying an estate to be settled in that country, be different from that of those which are executed in a foreign country, or by foreigners while resident in England. For though the public or national rights of a Scotsman, and of a native of England, are now the same; yet the municipal regulations of their respective countries are equally independent of each other, as before the union of the two kingdoms. The limitation, therefore, occurring in this statute having been quite unnecessary, every inference from the inaccurate manner in which it has been expressed must be unsatisfactory and inconclusive.

It was separately contended for the pursuers, That the devise was invalid, as being in favour of the Principal of the College of Aberdeen, and of other persons, distinguished only by their employments, such as the Dean of Guild, and the eldest Bailie of that town; because these persons constituted no corporation, which could maintain actions, or hold landed property in perpetual succession. The objection, however, was over-ruled by the Court. The same method of conveyance, it was observed, had been often practised in Scotland, as in the case of Heriot's, of Watson's, and other hospitals.

The Lords sustained the defences, thus giving effect to the settlement in question.

Lord Reporter, *Henderland.* Act. *Wight, Mat. Ross.* Alt. *Buchan-Hepburn.* Clerk, *Home.*

Fac. Coll. No. 253. p. 388.

1789. *February 25.* TRUSTEES of JANET DOUGALL, *against* JOHN DOUGALL.

No. 27.
A deed settling on the grantee the granter's whole effects and funds, and, in the event of non-acceptance, discharging the grantee of a debt due to the granter by him, found to be in both parts testamentary and revocable.

Janet Dougall executed, in favour of John Dougall her grandnephew, a deed, consisting, first of a general disposition of her whole effects and of the debts due to her, under the reservation of her liferent; and *2dly*, in the event of the disponee's refusing to accept this conveyance, of a discharge to him of a bill granted to her by his father for £.150; the interest of this sum during her life being likewise reserved.

For payment however of this bill, the discharge of which she had revoked by a formal writing, an action was brought against John Dougall, by certain trustees, in her name.

Pleaded for the defender: The first part of Janet Dougall's deed is revocable, that being of a testamentry nature; but the second is a *pactum inter vivos et de præsenti*, the irrevocable nature of which is not altered by its being subjoined to the *mortis causa* settlement. It is moreover strengthened by a clause of warrandice, implying the most absolute renunciation of any power to rovoke.