

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.

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, *Homs.*

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

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

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 donee'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 testamentary nature; but the second is a *pactum inter vivos et de presenti*, 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 revoke.

No. 26.

No. 27.

A deed settling on the grantee the grantor's whole effects and funds, and, in the event of non-acceptance, discharging the grantee of a debt due to the grantor by him, found to be in both parts testamentary and revocable.

No. 27. Answered: Any renunciation of a power to revoke in such a case is of no avail, because it necessarily partakes of the nature of the deed itself, in the same manner as if it had occurred in a donation *inter virum et uxorem*. The two parts of the deed therefore are not to be contradistinguished, both being of the same testamentary nature.

The Lord Ordinary having reported the cause,
The Lords found, that the discharge was revoked.

Reporter, *Lord Dreghorn*.
Clerk, *Sinclair*
S.

Act. *Arch. Campbell*.

Alt. *Macleod Bannatyne*.

Fac. Coll. No. 65. p. 118.

1793. December 10. OGIIVIE against MERCER.

No. 28.

Dispositive words are necessary in order to convey heritage.

Fac. Coll.

* * * This case is No. 114. p. 3336. *voce* DEATH-BED.

1795. December 9. ROBERTSON'S CREDITORS against MASON'S DISPONEES.

No. 29.

Heritable property in Scotland cannot be conveyed by a testament executed in England; and in the English form.

Fac. Coll.

* * * This case is No. 45. p. 4491. *voce* FOREIGN.

* * * See to the same effect the case Henderson against Selkrig, 10th June, 1795, No. 44. p. 4489. *voce* FOREIGN.

1802. January 12. GALLOWAY, Petitioner.

No. 30.

The words assign, transfer, and make over, goods, gear, debts, and sums of money, used in a testament, not effectual to

Walter Macfarlane of Macfarlane, and his brother William, were debtors to Mrs. Helen Spottiswoode, widow of James Garthshore, writer to the signet, in two sums constituted by bonds, granted in February, 1767; the one for £.155 Sterling, and the other for an annuity of £.50 Sterling during her life. An adjudication was led upon the first, in 1781, over the estate of Macfarlane.

Of this date, (10th November, 1786,) Mrs. Garthshore "nominated and appointed William Galloway, merchant in Edinburgh, not only to be my sole executor,