

Answered; Though the deed be not formal, with clauses for conveying heritage, it implies an obligation on the defunct, which his heir cannot quarrel. *2do*, That the word was industriously inserted, is cleared from a posterior clause, whereby the defunct provides the fee of a shop to the heir, and the liferent of it to his wife, and *exceptio firmat regulam*; for that had been superfluous, had the defunct intended to leave all his heritage to his heir. *3tio*, These words, 'the time of his decease,' import no testamentary act, but are usual in deeds *inter vivos*, whereby the effect of the obligation is only suspended till then.

"THE LORDS restricted the assignation to the moveable estate, and a liferent of the shop."

Harcarse, (ASSIGNATION.) No 519. p. 23.

No 7.

1688. July 19. SIR WILLIAM SCOT *against* WILLIAM NISBET.

THE case of Sir William Scot of Harden and his Lady, against William Nisbet of Dirleton, was reported by Stair, (Justice-Clerk,) whether Sir John Nisbet's disposition of all debts, bonds, obligations, and sums of money contained in an inventory, was taxative, or demonstrative, so as to reach and carry the money lying beside him the time of his decease.—THE LORDS found that it did not extend thereto; so the money, which was about 10,000 merks, fell to his daughter as his heir of line, nearest of kin and executor. Then she claimed the bygone rents in the tenants hands, unuplifted or not discharged by him before his death, on this ground, that in a former disposition he had expressed this, and having omitted them here, it must be presumed to be *de industria*, seeing so eminent a lawyer knew the import of these clauses. This being also reported on the 27th July, the LORDS found these rents fell under the general words of debts inserted in the disposition, and so belonged to William Nisbet, the heir of tailzie. Then they debated that she getting the moveables ought to pay the funeral charges, as was found in the Dutchess of Lauderdale's case.*—*Answered*, William's disposition was burdened with the debt.—*Replied*, That must be understood only *in suo ordine* after discussing of the moveables.

Fol. Dic. v. 1. p. 339. Fountainball, v. 1. p. 512.

No 8.
A disposition of all debts, bonds, obligations, and sums of money contained in an inventory, found not to carry money in the repositories of the deceast. Arrears of rent found to be comprehended under the word *debts*.

1697. February 25. MORISON *against* NISBET, and HARDEN.

WILLIAM NISBET of Dirleton granted bond to Dame Jean Morison, his predecessor's Lady, for the sum of 40,000 merks; and after her decease, they entered into a new transaction, by which he gets up the former bond, and grants her a new one for 30,000 merks. She likewise deceasing, the right of this bond falls to William Morison of Prestongrange, her brother; and he craving pay-

No 9.
A general disposition of moveables was found not to comprehend a bond granted to the dis-