No 61. was given to the words. But this arose from its being apparent from the remainder of the clause, that the granter meant to use them in a more confined sense, a reason which does not occur here; for although household furniture, silver plate, &c. are afterwards enumerated, yet the expression used in that part of the clause does not restrict the grant to these and similar articles. On the contrary, it conveys Mr Duff's whole moveable goods, gear, and effects, '*including*' these particulars; from which it is evident, that other articles of greater value, not enumerated, were meant to be conveyed; and these can only be ready money and *nomina debitorum*.

THE LORD ORDINARY took the cause to report.

THE COURT, on the grounds stated for the defender, unanimously found, 'That the conveyance in the contract of marriage by Alexander Udney Duff, in favour of Mrs Udney Duff, in the event of her surviving him, extends only to the *ipsa corpora* of moveables, and does not include debts or sums of money.'

A reclaiming petition for the Earl of Fife was refused without answers, 16th June 1795.

Lord Ordinary, *Eskgrove.* Act. *Dean of Faculty Erskine, J. W. Murray.*
Alt. *Tait, Monypenny.* Clerk, *Home.*

R. Davidson. *Fol. Dic. v. 3. p. 126. Fac. Col. No 169. p. 399.*

*** In this case there were cross appeals.—THE HOUSE of LORDS ORDERED and ADJUDGED, That the original and cross appeals be dismissed, and that the interlocutors therein appealed from be affirmed.

SECT. IX.

Liberty of Disponing without Consent.—Making Provisions a Burden on Lands.—Obliging to lay out on Sufficient Security.—General Abrogatory Clause in an Act of Parliament.—Relieving from Public Burdens.

No 62. A person took a disposition to himself and wife in liferent, and his children in fee; reserving power to dis-

1724. *December* 9. ELSPETH WHITE *against* BESSIE MOOR.

PATRICK WHITE, sometime after marriage with Bessie Moor, purchased a tenement in Aberdeen; and there being no contract of marriage betwixt them, he took the rights thereof to himself and wife in liferent, and to the heirs of the marriage in fee, but with special provision and condition, 'That it should be 'lawful for him to burden the said houses with any sums of money, less or more,

No 62.
pone away, with consent of his wife. Found he could not dispone gratuitously in prejudice of the liferent.

'that he should happen to borrow from any person or persons, or with any bond 'of provision to his children, or to dispone the same to any person he should 'think fit, without consent of his said spouse, or heirs procreate, or to be pro-'create betwixt them, as freely as if no such provision had been made in their 'favours.'

Of this marriage there was one daughter, who, after her father's decease, produced an absolute disposition from him of the foresaid tenement in her favours, and upon it craved to be preferred to her mother's liferent-right, *alleging*, That though the husband had provided her in such a right, yet by the conception thereof he had retained to himself a faculty of disponing the liferent-lands to any person he pleased; and that accordingly he had exercèd that faculty by the conveyance made in her favour.

It was *answered* for the relict, 1*mo*, That by the reserved faculty no more was intended, than that the husband should have a power to dispone for onerous causes, as appeared from the words of the clause, *viz. of burdening the houses with sums of money borrowed, or provisions to children:* Therefore since he had restricted himself from burdening, except for payment of borrowed money or provisions to children, he could not be said to have retained the absolute power of disponing, according to the principle, *cui minus non licet, nec plus licet.* 2*do*, By the husband's reserving a power to dispone *without consent of the heir*, it appears, that he had it not in view to reserve a power of disponing, except in such cases where the consent of the heir was necessary, which never could be to a disposition in her own favour.

The Lords found, That the husband could not, in virtue of the reservation contained in his right, dispone the lands gratuitously in favour of the daughter the fiar, in prejudice of the liferenter; and therefore preferred the relict.

For the Relict, *Gardenstone*. Alt. *Ja. Ferguson, sen.* Clerk, *M'Kenzie*.

Fol. Dic. v. 3. *p.* 131. *Edgar, p.* 128.

1746. *June* 3. Beatsons *against* Beatson of Glasmonth.

No 63.
A person, whose eldest son was out of the kingdom, disponed his estate to his second son, and his heirs, burdened with provisions to his younger children, and redeemable by his eldest son.

James Beatson of Suther-Glasmonth had several children, of whom the eldest son, William Beatson, doctor of medicine, went abroad after the rebellion in 1715, on account, as was supposed, of some part of his behaviour at that time; and during his absence, James Beatson disponed his estate to Robert, his second son, and the heirs-male of his body, and so successively to three others, his younger sons; under this provision, 'That on which soever of his said sons the fee of 'the said lands, &c. should fall and terminate, by the existing of an heir-male 'lawfully to be procreate of either of their bodies, according to the respective 'order of their primogeniture, such one of them should, by his acceptance there-'of, be bound and obliged, likeas he bound and obliged him, and his heirs-male,