No 6. England, to this day, a debtor is not bound to pay to an assignee. In our later practice, an assignation, with respect to deeds for a valuable consideration, has obtained the force and effect of *cessio in jure*; and if such a deed be so completely assignable, there can be no doubt of its descending to heirs. But still there are many obligations so personal, as not to transmit either to heirs or assignees. In the present case, the sum in question is made payable to George Young the infant, at the first term after he shall arrive at the age of sixteen, being Whitsunday 1747, without the least mention either of heirs or assignees. The question then is, what entitles either an heir, or an assignee to claim, since the obligant has not consented to pay to either? It is very true, that if the obligee had survived the term of payment, the obligation must have transmitted, because the obliger ought to pay at that term, and the heir must not suffer by his delay; but when he has been guilty of no delay, upon what medium is he liable to the pursuers, when he only promised to pay personally to his grandson? His obligation was gratuitous, and he had the power of giving it upon any condition, and in any terms he thought fit.

Obligations for a valuable consideration, it is true, are always transmissible to heirs and assignees; it is the creditor, in that case, who purchases the obligation, and, for that reason, it ought to be regulated by his will and intention. But wherever an obligation proceeds from the free-will of the debtor, it ought never to be extended beyond the letter of the deed, unless strong circumstances can be specified to support the extension; none such can be specified in the present case; on the contrary, every circumstance speaks aloud that there should be no extension beyond the letter of the deed.

Upon the foundation of the interlocutor complained of, the obligation must have been created the moment the deed was signed, for otherways it could not go to heirs. Upon this supposition the infant, had he lived till fourteen, might have tested upon it, and might have assigned it gratuitously. It is hard to suppose that this could be done; it is still harder to suppose, that an inhibition might have been raised upon the contract the moment it was signed; and yet, there is no evading this consequence, supposing a pure obligation to have been created transmissible to heirs and assignees.

THE LORDS unanimously altered, sustained the defence, and assoilzied.

Rem. Dec. v. 2. *No* 102. *p.* 188.

No 7.
A father left his whole effects to his only son, which he estimated at a certain sum, burdened with portions to his daughters,

1749. *December* 8. CARNEGY of Lour *against* GRAHAMS.

JOHN GRAHAM, merchant in Dundee, having, by his first wife, three daughters, Elizabeth, Margaret, and Grizel, and by his second wife a son, David, and daughter Marjory, settled his affairs, by disponing his whole effects to David; providing that he should be bound to pay his debts, and to each of his sisters 5000 merks Scots: 'And failing any of the said children by death, that

No 7.
declaring, that if any of his children died, the portion of such should accresce to the survivers. The son was found comprehended in this provision, and that he dying, his portion accresced.

'the portion or portions of the deceasing child or children were to be equally 'divided' amongst the surviving children of both marriages; providing such 'child or children died before their marriages or majority:' Also providing, 'that in case his moveable estate, exclusive of his plenishing, should fall short 'of the sum of 32,000 merks Scots money, to which he valued the same, and 'that by the insolvency of any of the debtors, specially or generally before-'mentioned, then, and in that event, his daughters and son were to suffer a 'proportional share of any loss, by the insolvency of any debtors, and that 'effeiring to their respective designed interests in his moveable estate.' And named David his executor and universal legatar.

David and Marjory died soon after their father; and Elizabeth was married to Patrick Carnegy of Lour, to whom she disponed all effects 'which fell and 'accresced to her by the death of her father or brother,' and died.

Patrick Carnegy claimed an equal share of David's succession with the two surviving sisters. as disponed to him by his wife, to whom it belonged, in virtue of the clause in their father's will, whereby the portion of a deceasing child accresced to the survivers.

Pleaded for the defenders; David had no portion, but was an universal successor; and no provision being made concerning his succession, it must go to his legal representatives, which they only are, as their sister Elizabeth made up no titles in her lifetime; and it is only the portions of the daughters that are appointed to accresce, on their death, to the survivers.

Pleaded for the pursuer; The testator's intention was to give all his children portions; and, excepting that his son's was made larger than the rest, to preserve an equality amongst them, by making the portion of the deceased accresce to the survivers. The son's portion was to be 12,000 merks; and, in case of deficiency, the rest were to suffer a proportional loss with him; and the portion of the 'child' deceasing was to accresce to the surviving 'children', in which enunciation the son was comprehended, consequently also under the term 'child,' whose provision was to accresce.

THE LORDS, 2d November, found, that the portion of the son did accresce to the surviving children, *ipso jure*, without any titles being made up thereto; and therefore found, that the pursuer had right to the third part of what belonged to the son, in right of his wife. And this day, on bill and answers, adhered.

Reporter, *Elchies.* Act. *Lockhart et Ferguson.* Alt. *R. Craigie & R. Dundas.*
Clerk, *Gibson.*

D. Falconer, v. 1. No 107. p. 122.

1749. *December* 15.
BINNING of Wallyford *against* The CREDITORS of AUCHINBRECK.

No 8.
Provisions to children payable at their

MR CHARLES MAITLAND of Hatton, afterwards Earl of Lauderdale, granted a bond of provision to his children, for certain sums, "payable at their seve-