

only son of the sister having served himself heir of provision in general, it came to be questioned between him and a creditor of the disponent, Whether or not he was universally liable upon the clause burdening him with payment of the disponent's debts? It was admitted, that such burdens in dispositions to particular subjects were understood as only intended for the security of creditors; but it was argued, That the acceptance of a man's whole estate under a general conveyance, must infer an universal passive title. THE LORDS found, That as the defender was not *alioqui successurus*, he was not universally liable, but *tantum in valorem* of the subjects disponent.

No 213.

*Fol. Dic. v. 4. p. 45. Kilkerran.*

\* \* This case is No 119. p. 9786.

1752. June 30.

ANNANDALE against BROWN.

DAVID ANNANDALE merchant in Edinburgh, settled the liferent of a house on Christian Key his wife, in the event of her surviving him, and also executed in her favour a disposition of his moveables, expressly burdened with payment of all his debts. After his death, Key intromitted universally with his moveables, yet so, that after payment of the privileged debts due by the deceased, her superintromissions appeared not to have exceeded L. 2 Sterling.

Key the widow was afterwards married to Peter Brown wig-maker in Edinburgh, the defender, and they, during the existence of the marriage, paid to Priscilla Handaside the sum of L. 50 Sterling, which the deceased Annandale owed her by bond. Instead of taking receipt for that sum, they made Handaside grant an assignation of it to a trustee for their use. In consequence of this assignation, the trustee adjudged the house above mentioned which had belonged to Annandale.

After the death of Key, William Annandale the pursuer, brother and heir of David Annandale, having raised a reduction of the assignation, and of the adjudication which followed upon it, *pleaded*, That, as Key, by her acceptance of the disposition made in her favour by her husband Annandale, became burdened with the payment of all his debts, she and Brown her second husband must be understood to have paid Handaside's debt in compliance with this obligation; and that debt, being thus extinguished, cannot now subsist in the person of Brown, (who derives right from Key) so as to affect the heritage of Annandale.

*Answered* for the defender Brown; Although action had been brought against Key herself, she would not have been burdened in consequence of the disposition by her first husband beyond the amount of the subjects with which she intromitted, as was found in the case Thomson against the Creditors of Thn, 28th December 1675, observed by Stair, No 6. p. 3593. Action indeed lay

No 214.

A person dis-  
posed to his  
wife the  
whole move-  
ables, with  
the burden of  
his debts, and  
settled the  
liferent of a  
house on her.  
Having paid  
privileged  
debts, near-  
ly to the ex-  
tent of the  
moveable;  
she took an  
assignation in  
name of a trus-  
tee, to a debt  
of L. 50,  
upon which  
she adjudged  
the house.  
Found en-  
titled to  
do so.

No 214.

against her as vitious intromitter, but it could not in law have affected her husband, might have been avoided by her confirmation, was extinguished by her death, and in no event would have benefited the pursuer, who is not creditor, but heir of Annandale.

“ THE LORDS repelled the reasons of reduction, and found that the defender was entitled to take an assignation to the bond in his own, or in a trustee's name.”

Reporter, *Justice-Clerk.* Act. *A. Pringle.* Alt. *Ferguson.* Clerk, *Murray.*  
D. *Fol. Dic. v. 4. p. 45. Fac. Col. No 18. p. 36.*

1757. December 14.

JOHN WATSON, Writer in Edinburgh, against JEAN ERSKINE.

No 215.

A relict intromitting with her husband's effects in virtue of a general disposition, found liable only for actual intromissions.

ROBERT MEEK brewer in Dalkeith, by deed, bearing date 9th April 1739, “ For love and favour to Jean Erskine his spouse, and for the better enabling her to make payment of such debts as should be resting by him at his death, and defraying the expences of his last sickness and funerals,” conveyed to her, in general, all his moveable effects, of whatever kind; and, in particular, without prejudice to the said generality, he assigned to her a list of debts due to him by many different people, which are therein specially enumerated. This deed contains also the following clause. “ Declaring always, as it is hereby expressly declared, That the said Jean Erskine shall be bound and obliged to account to Patrick and Thomas Meeks, our children, for two thirds of the superplus, if any be, of the sums and subjects hereby conveyed, after payment of my just and lawful debts, and funeral-charges; and in case the said debts funerals, and other expenses, shall exceed the moveables hereby assigned, the said Jean Erskine is to be no further liable than for what she shall receive by virtue of this right and assignation.”

Robert Meek died within a few weeks after granting this deed; and the said Jean Erskine, his relict, in virtue of the conveyance in her favour, intromitted with his moveable subjects, and recovered part of the debts assigned to her. The remainder of them she alleged were old and desperate, and not worth doing diligence upon.

In the year 1740, John Watson writer in Edinburgh, a creditor of Robert Meek, obtained decret in absence, before the Sheriff of Edinburgh, against the said Jean Erskine, as representing her husband, without any proof of the passive titles, other than holding her as confessed; and upon this decret he first led an adjudication, and thereafter proceeded to point the moveable effects of the defunct which were in her possession.

In 1743, Jean Erskine raised a reduction of that decret; but the process was not properly insisted in till the year 1755; when it was urged for her, as a