No 76. the said Robert Waddel, with and under the legacy also within specified. From all which it is clear, that this legacy is a real burden upon the lands.

Answered to the *third* defence, It is altogether irrelevant; for it is not so much as asserted, that the pursuers verbally even agreed to grant a discharge of their debt to William Waddel, or that they subscribed the articles of roup, in which that conditional obligation is said to have been contained; and surely their taciturnity upon that occasion cannot be binding upon them, as it is established law, that when a debt is constituted by writing, the extinction of it can only be proved, either by the oath of the creditor, or by a written discharge.

The Lords found the legacy of 900 merks a real burden upon the lands of Mothal and others: Found, That the pursuers, as the two surviving children, have right to two thirds of the said legacy; but found, that they cannot insist for the share of their deceased brother, without making up titles to him. Upon a reclaiming petition, the Lords adhered. *

Act. *William Baillie.* Alt. *Wal. Stewart.*

J. M. *Fol. Dic. v.* 4. *p.* 69. *Fac. Col. No* 43. *p.* 93.

No 77.
A disposition though burdened with the whole debts of the disponer, not mentioning the names of particular creditors or the sums, did not create a real burden on the land, as to these.

1765. *February* 21. Stenhouse *against* Innes and Black.

John Stenhouse disponed his lands of Southfod to his eldest son John Stenhouse, with the burden of all his debts, and referring to an heritable bond granted by the son to him, of the same date, which mentioned the names of the creditors, but not the sums due to them.

John Stenhouse younger, having granted two heritable bonds over the lands to Isobel Innes and William Black, a competition arose between them and John Stenhouse elder.

John Stenhouse having claimed a preference for relief of his debts, in virtue of the disposition and heritable bond, the other two creditors *objected*, that the amount of the debts did not appear upon record, and that it was now fixed that general burdens are ineffectual against creditors and singular successors.

Answered for Mr Stenhouse; It is not necessary that the amount of the burden should appear upon record; it is enough that the record shew there is a burden, and direct the creditor or purchaser how to discover the amount of it: Hence it has been found, that a general reference in the sasine to the disposition where the extent of the burden is mentioned, is sufficient; Creditors of Smith, 26th July 1737.—*infra, h. t.*; Callenders *contra* Waddel of Eastermothal, 1761, No 76. p. 10261. Here the sasine upon the disposition refers to the heritable bond; and as that contains the creditors' names and de-

* In the Faculty Collection, the judgment is erroneously stated. The above are exactly the the terms of it.

signations, singular successors, whether creditors or purchasers, have it in their power to learn the amount of the burden. The record is in the same situation in both cases; the only difference is, that, in the present, the singular successor is obliged to go one step farther; but the faith of the records being out of the question, that is but a light object compared with the defeating of the solemn contracts of parties. No 77.

"THE LORDS found, That the clause in the disposition granted by John Stenhouse, in favour of his son, by which the disposition is burdened with the whole just and lawful debts then due by the father, without mentioning either the names or the sums due to them, did not create a real burden upon the lands disponed, *quoad* these debts; and found, that the defect was not supplied by the heritable bond which was granted, of the same date, nor by the infeftment which followed thereon."

For John Stenhouse, *Rolland*. For the Creditors of John Stenhouse younger, *Lockhart*.
Reporter *Coalston*. Clerk *Pringle*.

A. R. *Fol. Dic. v. 4. p. 70. Fac. Col. No 11. p. 18.*

1780. *July* 19.

JANET ALLAN, and her younger Children *against* The CREDITORS of RICHARD CAMERON, her eldest Son.

No 78.
A disposition not containing a special enumeration of burdens or warrant to infeft for them, did not render them real. Those here in question were provisions to a wife and children.

JOHN CAMERON, the husband of Janet Allan, executed bonds of provision, making considerable additions to former settlements on his wife and family; and at the same time he likewise disponed his estate to his eldest son, Richard Cameron, under condition, "that Richard should pay all his debts, and make payment to Janet Allan, his well-beloved wife, of the different liferent annuities provided to her by contract of marriage and bond of this date, making in whole the sum of L. 100 Sterling; and likewise to pay to the younger children the several sums provided to them in a bond of provision, of this date, executed by him in their favour."

The procuratory of resignation expresses "the burdens, provisions, &c. before written, here also held as repeated *brevitatis causa*, but nevertheless appointed to be ingrossed in the infeftment to follow hereupon; otherwise the same, with all that can follow thereupon, to be void and null." And the same clause again appears in the precept of sasine.

The instrument of sasine accordingly specifies those burdens and provisions.

In the wife's bond of provision too, this declaration is made by John Cameron; "with the payment of which yearly annuity I have burdened my real