

1776. July 9.

FRASER *against* SMITH.

No 59.

AGNES FRASER bequeathed, at her death, to Janet Smith, "her moveable goods and gear, whole body-cloaths and wearing apparel; all her linens, and all other moveables, goods and gear, which shall belong to her at her death, of whatever kind or denomination; and particularly," &c. Then follows an enumeration of her household furniture and apparel. The principal part of the testatrix's effects consisted of a promissory note of a banker's for L. 40, which being claimed as falling under the above bequest, the executor *urged*, That it did not come under the general description of moveable goods and gear, and being left out of the enumeration of particulars, it was thence presumable, that so considerable a part of the defunct's succession was not intended to be bequeathed away from her executor. THE LORDS preferred the executor to the sum in question. See APPENDIX.

*Fol. Dic. v. 3. p. 126.*

1780. July 21.

JOHN and URSULA SMITH *against* JAMES MARSHALL.

No. 60.

A father disposed to his son his whole estate, under burden of his debts, declaring that, by accepting the disposition, his son should be *personally* liable for them. Found he was, notwithstanding, liable only *in valorem*.

JOHN MARSHALL, the father of James Marshall, was debtor in a bond granted to John and Ursula Smiths.

Several years prior to the date of the bond, John Marshall had granted and delivered to James, who was his eldest son, a general disposition of his whole estate and effects, real and personal, with the reservation of his own life-tenure right; 'and with and under the express burden of his just and lawful debts, which should happen to be addebted and owing and resting by him at the time of his decease; with which, it is added, not only the said subjects above disposed, with this present right and disposition thereof, and all infestments and diligence, or execution following; or competent to follow thereupon, are and shall be expressly burdened; but also the said James Marshall and his foresaids, by their acceptation hereof, shall become personally liable thereto, and be personally bound in payment of.'

James Marshall, however, did not take infestment on this disposition till several years after his father had granted the bond. In the mean-time, the latter uplifted debts due to him by heritable bonds, sold one of two tenements which he had in property, and conveyed most of his remaining effects to his other children. Upon his father's death, James was decerned executor, but not *confirmed*; uplifted the debts; and paid the creditors without decree, though not without public intimation in the newspapers.

John and Ursula Smiths then insisted in an action against him on these three grounds; *First*, As being liable for his father's debt to them *præceptione hæreditatis*, the infestment on the disposition being posterior to the bond, though the