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

No 78. estate, disponed by me to Richard Cameron, my eldest son, by disposition thereof in his favour of this date, and relative hereto."

Richard Cameron, after the death of his father, became bankrupt; and a competition ensued, between his creditors on the one hand, and on the other, his mother, brothers, and sisters, who contended, that their respective provisions were real burdens on his lands, and entitled to a preference over his other debts. And, in support of that claim, they

Pleaded; From the expressions used in the disposition, and from the above-quoted declaration in the bond of annuity, John Cameron's intention of making the provisions in question real burdens on the subjects conveyed to his son, is clear and undoubted. Why then should effect be denied to it? Being specified in the instrument of sasine, the provisions are published by the records, and creditors or purchasers fully put on their guard.

It is true, a personal obligation upon a disponee is different from a real burden on the lands conveyed. But here is more than a personal obligation, an express order for ingrossing the burdens in question in the infeftment, sanctioned with the declaration, that the disposition should be otherwise void.

It is likewise admitted, that no indefinite or unknown incumbrance can be created on land. But though the wife's annuity only, and not the children's provisions, are expressed in the disposition, both are alike precisely specified in the infeftment; and therefore to this case that objection cannot be applied.

Answered; The disposition contains nothing more than a personal obligation on Richard Cameron, without imposing any real burdens on the subjects disponed. This could not be done without specially enumerating such burdens in the disposition or warrant of the infeftment, as well as in the infeftment itself, and declaring that the conveyance was granted only under them; Erskine, b. 2. tit. 3. § 49.; Bankton, b. 2. tit. 5. § 25. An effectual burden must be specially defined and ingrossed; and it must be *really*, and not *personally* conceived. None of these requisites, however, are complied with in this case; there being no specification in the warrant of infeftment except as to the widow's annuity, but only a reference to other deeds, which are personal, and contain no authority for taking sasine; for the instrument of sasine is to be regarded but as the bare assertion of a notary; February 21. 1765, Stenhouse *contra* Innes and Black, No 77. p. 10264.

That the obligation is merely personal, appears from the words in which it is conceived; and the order for ingrossing the provisions in the infeftment, or their being so ingrossed, can never alter their nature, which must still remain either real or personal, according to the original conception of them; Bankton, b. 2. tit. 5. § 25.

THE LORDS found, 'That the provisions to the widow and younger children were not real burdens on the estate disponed.'

To this judgement the Court adhered, on advising a reclaiming petition and answers. No 78.

Reporter, *Lord Monboddo.* For Janet Allan and her Children, *Lord Advocate, Maclaurin.* For the Creditors of Richard Cameron, *Ilay Campbell, Craig.*

S. *Fol. Dic. v. 4. p. 70. Fac. Col. No 118. p. 218.*

*** This case was appealed.

1781. *May 15.*—The House of Lords ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutor complained of affirmed.

1788. *January 14.* JOHN BALFOUR *against* PATRICK MONCRIEFF.

No 79.
Real warrandice, how far effectual against singular successors, if it be not specified in the warrentor's infeftment.

THE late Mr Balfour Ramsay was proprietor of the lands of Demperstone in fee-simple, while his wife, Mrs Anna Ramsay, held those of Whitehill under a strict entail, in favour of the heirs-male of her body, bearing the name and arms of Ramsay.

In order to preserve the representation of the two families, it was agreed, that Mr Balfour Ramsay should convey the lands of Demperstone to his second son, under an obligation to exchange them with his elder brother for the lands of Whitehill. These last the second son was to hold under the limitations of the entail.

The proposed exchange was effected soon after Mr Balfour Ramsay's death. The nature of the transaction was distinctly set forth in the disposition of the lands of Demperstone, in favour of Mr John Balfour, the eldest son. But in the charter under the great seal which followed, it was only stated in general terms, and in the instrument of sasine it was not at all mentioned.

Mr Balfour afterwards sold the lands of Demperstone to Mr Moncrieff, who refused to pay the price, on this ground chiefly, that if any of the sons of Mr Balfour, who were the proper heirs of entail in the lands of Whitehill, should at any time enter their claim, Mr Balfour's younger brother and his heirs might have recourse, in virtue of the real warrandice, against the lands of Demperstone. Mr Balfour, on the other hand, contended, that as the circumstances of the exchange did not appear from his infeftment, those who purchased from him were perfectly secure. He

Pleaded, Nothing can affect a singular successor in landed property, which is not accurately pointed out in the records. Even where, from a registered sasine, it appears, that some limitation or incumbrance was intended, and where its nature and extent is precisely specified in the charter or other warrant for taking infeftment, this is not enough, if it do not enter the infeftment itself.