the defender had never bestowed a sixpence on the defunct, were irrelevant, because John Curdy, in consequence of the obligation engrossed in the disposition executed in the pursuer's favour, had the defender effectually and irrevocably bound; and, if he had chosen not to insist strictly for implement thereof, the defender could not have been prejudged thereby, as he was bound, as well as willing, to perform, and it was opinional in him to insist for performance or not. No. 24.

As to the counter obligation, that deed fell to be in the hands of the other party; and the recital of it in the deed granted by Curdy, appeared to be sufficient evidence of its existence. It is true the transaction itself did not appear in a favourable light to the Court, but there was no proper evidence of fraud before them; and inequality alone is not a good ground by our law for setting aside a contract. The question therefore came to this, how far the deed in question was alterable? which the Judges generally thought it was not; for that here there was not a disposition merely gratuitous, but proceeding upon an onerous cause, which the other party could have required implement of; besides, that *pacta de successione viventis* are valid by our law, when granted for an onerous cause; and the onerosity was thought sufficiently instructed in this case. Accordingly, the following judgment was pronounced:

"The Lords sustain the defence, and assoilzie the defender."

Act. *R. White, Maconochie.* Alt. *Geo. Wallace.* Clerk, *Campbell.*

Fac. Coll. No. 03. *p.* 145.

1785. *June* 17. JOHN ROBERTSON *against* GEORGE ROBERTSON.

No. 25.
A settlement chiefly relating to moveables, effectual to convey heritable property, where *dispositive* words are used.

The now deceased father of the parties executed a deed, in which after premising his intention to dispose of all his means and estate, and that John Robertson, his eldest son, had formerly received an ample share of his effects, he disponed, assigned, and conveyed, to George Robertson, his youngest son, "all the stocking upon his farms, with all other goods, gear, debts, or sums of money presently pertaining to him, or that should happen to pertain to him at the time of his death, with all bills, bonds, decreets, and every other kind of goods, debts, subjects, and effects that belonged to him, or should appear to belong to him at his decease."

At the period of executing this settlement, the deceased was creditor by a personal bond, upon which an adjudication afterwards followed; a circumstance from which John Robertson, the eldest son, contended, that the debt contained in it had become heritable, and therefore could not be transmitted in consequence of a settlement which appeared to relate only to moveable funds.

Observed on the Bench: Heritable effects, such as a debt secured by adjudication, will not be carried by a deed conceived in a testamentary form. Where, however, proper dispositive words have been used, the only question is concerning the intention of the deceased, which, in this case, is sufficiently evident.

No. 25. The Lords affirmed the judgment of the Lord Ordinary, which found, "That George Robertson had right to the sums in question, in virtue of the settlement made by his father."

Lord Ordinary, *Kennet.* For John Robertson, *Robertson.* For George Robertson, *E. Armstrong.* Clerk, *Robertson.*

Fac. Coll. No. 210. *p.* 329.

1786. *February* 1.

MARGARET and MARY MACRA, *against* The PRINCIPAL of the COLLEGE of ABERDEEN, and Others.

No. 26.
The mortmain statute of 9th Geo. 2. C. 36. does not extend to settlements made in Scotland, with regard to money invested in the British funds.

Alexander Macra, a native of Scotland, executed a deed in this country, whereby he disponed his effects, consisting of monies invested in the public funds, to the Principal of the College of Aberdeen, and others, as trustees.

His chief object was, to provide a fund for the maintenance and education of poor children of the name of Macra. And by the settlement, in which he reserved to himself a power of altering, the trustees were directed to dispose of his effects, and to lay out the proceeds in purchasing land in Scotland.

Margaret and Mary Macra, his sisters, and nearest in kin, insisted, after his death, in an action, for setting aside this settlement. In particular, they contended, That it fell under the 9th act Geo. II. C. 36. and

Pleaded: To prevent conveyances of property in mortmain, which are so incompatible with the interests of a commercial nation, and at the same time so injurious to the kindred of those who choose in this manner to dispose of possessions which they can no longer enjoy, it has been provided, "that no alienation of land, or transference of personal estate, or of money in the public funds, for uses called charitable uses, should be validly made, unless the granter be thereby irrevocably divested, in the case of real property, twelve months, and with regard to other effects, six months prior to his death."

It was indeed at the same time declared, "That nothing in the act contained should extend, or be construed to extend to the disposition, grant, or settlement, of any estate, real or personal, *lying* or *being* within that part of Britain called Scotland." But this tends rather to strengthen than to invalidate the pursuer's plea. The framers of the law must have understood, that its operation, without such a clause, was not to be confined to England alone; and the exception being restricted to effects locally situated in Scotland, the enactment here must have its full effect, agreeably to the rule, *Exceptio firmat regulam, in casibus non exceptis.*

Answered: The statute of the late King was only intended to regulate the proceedings of Englishmen with regard to effects situate in their native country; Bankton, B. 4. Tit. 1. § 16. The expressions it uses, such as "manors, advowsons, hereditaments, &c. are purely English. The methods too of authenticating the settlements by "deeds indented, signed, and sealed," are peculiar to