

universal representative in all debts, heritable and moveable. This distinguishes the present from all the cases referred to by the pursuer; particularly that of Maitland, where, besides this, the heir succeeded through his mother to the entailed estate, and to the fee-simple of the debts affecting the estate through his father, who had purchased them with his own money; and it would have been unjust to hold, that by succeeding to the entailed estate, upon which he could not borrow a single farthing, he should lose the succession which opened to him through his father.

No. 10.

The obligation to pay off the debts, is the condition of taking up the estate, and he cannot make it more lucrative than his ancestor has done for him. If, instead of allowing him to succeed to the unentailed property, he had transferred to him effects to a similar amount, by an irrevocable deed *inter vivos*, neither he nor his representatives could have claimed payment of the £5000, *quia debitor non præsumitur donare*. The gift will be held *pro tanto* as an extinction of the debt; and *multo magis* if it be to a greater amount, although it should not even be clogged with any obligation for payment of that or any other of the donor's debts.

The obligation by the entailer was to pay this £5000 to George Cockburn, his heirs, executors, or assignees, and he was to lay it out for the purposes of the marriage. The entailer indeed became bound to secure it on Gleneagles, in favour of the creditor; but this obligation was fulfilled, as he received not only security but payment of it, by the various settlements made in his favour.

The Court, considering that George Cockburn was himself liable to pay his uncle's debt, by the nature of the settlements executed in his favour, held, that he could not assign the bond in question to any of his own creditors, as the moment it came into his person it was extinguished *confusione*, and never could be again revived. They accordingly adhered.

Lord Ordinary, *Armadales*. Act. *H. Erskine, Hay, Forbes*. Agent, *T. Cranstoun, W. S.*  
 Alt. Lord-Advocate *Hope, M. Ross*. Agent, *A. Duncan, W. S.* Clerk, *Pringle*.

F.

*Fac. Coll. No. 59. p. 133.*

1806. May 23.

CLARKE against BRUCE.

No. 11.

SEE this case *voce* WARRANDICE, No. 98. p. 16643. relative to the consequences in a question with a creditor, where a tailzie is defective in the clauses against selling.

1807. May 14.

SMOLLET'S Creditors against SMOLLET.

No. 12.

MR. COMMISSARY SMOLLET (20th August 1769) made a general disposition of his property in favour of trustees for the purchase of land to be entailed

Personal  
debts con-  
tracted by the