

No 212.

a disposition, with the burden of the granter's debts, is a known common passive title; and has the same effect as if the accepter were served heir to him. The only expedient that the receiver of such a disposition has to relieve himself of the universal passive title, and to secure his being only liable to the extent of the subjects conveyed, intromitted with by him, is to confirm himself executor-creditor, upon the warrandice of the disposition expressed or implied. Such management exempts the dispoonee from all suspicion of fraud, and affords to the creditors of the defunct an easy charge against him, to operate their payment to the extent of his intromissions; but where he omits to confirm, and inventory the subjects intromitted with by him, he is understood to take his hazard of the effects answering the debts; so that if he should not make good so much of the effects as would answer the debt, he must, notwithstanding, satisfy the whole. And it is most just it should be so, since he did not follow the legal and ordinary precaution, by confirming the subjects, and thereby save himself from being further liable than to the extent, and furnish the creditors with a rule of charge against him, on the inventories of the same. Now, in the present case, Mr Murray, without confirming, or inventorying the effects, intermeddled with the same *per aversionem*, consequently he became universally liable to the Creditors of Sir Alexander Murray; and the debts paid by him, in consequence of his being so liable, became for ever extinct. See the act 12th Parl. 1617, touching the long prescription, and the cases of the Lady Little Cessnock 1718, and 2d February 1728, Lord Strathnaver. See APPENDIX.

THE LORDS found, That Sir Alexander Murray not having repeated the irritant, prohibitory, and resolute clauses of the entail in the sasine, upon which he bruiked the estate, otherwise than by a general reference, the debts contracted by him may be charged upon the entailed estate. And further found, That Mr Hugh Murray, by the conception of the disposition founded on, granted to him by Sir Alexander Murray, of his effects, was not obliged to pay the debts of the granter, beyond the value of the subjects disposed. See TAILZIE.

*C. Home, No 269. p. 432.*

\*.\* See Kilkerran's report of this case, *vocce* TAILZIE.

No 213.

1745. June 6.

MERCER against SCOTLAND.

A PERSON, passing by his brother and heir at law, disposed to his sister, and her heirs, all debts owing to him, heritable and moveable, and all his estate, goods, and gear, which should belong to him at the time of his death; with this *proviso*, That the right, and every person who should claim thereby, should be burdened with the payment of all his just and lawful debts; and he reserved a power to alter at any time in his life. After the death of the dispoonee, an

only son of the sister having served himself heir of provision in general, it came to be questioned between him and a creditor of the disponent, Whether or not he was universally liable upon the clause burdening him with payment of the disponent's debts? It was admitted, that such burdens in dispositions to particular subjects were understood as only intended for the security of creditors; but it was argued, That the acceptance of a man's whole estate under a general conveyance, must infer an universal passive title. THE LORDS found, That as the defender was not *alioqui successurus*, he was not universally liable, but *tantum in valorem* of the subjects disponent.

No 213.

*Fol. Dic. v. 4. p. 45. Kilkerran.*

\* \* This case is No 119. p. 9786.

1752. June 30.

ANNANDALE against BROWN.

DAVID ANNANDALE merchant in Edinburgh, settled the liferent of a house on Christian Key his wife, in the event of her surviving him, and also executed in her favour a disposition of his moveables, expressly burdened with payment of all his debts. After his death, Key intromitted universally with his moveables, yet so, that after payment of the privileged debts due by the deceased, her superintromissions appeared not to have exceeded L. 2 Sterling.

Key the widow was afterwards married to Peter Brown wig-maker in Edinburgh, the defender, and they, during the existence of the marriage, paid to Priscilla Handaside the sum of L. 50 Sterling, which the deceased Annandale owed her by bond. Instead of taking receipt for that sum, they made Handaside grant an assignation of it to a trustee for their use. In consequence of this assignation, the trustee adjudged the house above mentioned which had belonged to Annandale.

After the death of Key, William Annandale the pursuer, brother and heir of David Annandale, having raised a reduction of the assignation, and of the adjudication which followed upon it, *pleaded*, That, as Key, by her acceptance of the disposition made in her favour by her husband Annandale, became burdened with the payment of all his debts, she and Brown her second husband must be understood to have paid Handaside's debt in compliance with this obligation; and that debt, being thus extinguished, cannot now subsist in the person of Brown, (who derives right from Key) so as to affect the heritage of Annandale.

*Answered* for the defender Brown; Although action had been brought against Key herself, she would not have been burdened in consequence of the disposition by her first husband beyond the amount of the subjects with which she intromitted, as was found in the case Thomson against the Creditors of Thn, 28th December 1675, observed by Stair, No 6. p. 3593. Action indeed lay

No 214.

A person dis-  
posed to his  
wife the  
whole move-  
ables, with  
the burden of  
his debts, and  
settled the  
liferent of a  
house on her.  
Having paid  
privileged  
debts, near-  
ly to the ex-  
tent of the  
moveable;  
she took an  
assignation in  
name of a trus-  
tee, to a debt  
of L. 50,  
upon which  
she adjudged  
the house.  
Found en-  
titled to  
do so.