

DIVISION V.

Accepting a Disposition with the Burden of Debts.

1662. December 2.

DAME MARION CLERK *against* JAMES CLERK of Pittencrief.

MR ALEXANDER CLERK, his estate being tailzied to his heirs male, he obliged his heirs of line to renounce and resign the same in favour of his heirs male; which disposition he burdened with L. 20,000 to Dame Marion Clerk his only daughter, and heir of line. The clause bore L. 20,000 to be paid to her out of the said lands and tenement; whereupon she having obtained decret, James Clerk the heir male suspends on this reason, That the foresaid clause did not personally oblige him, but was only a real burden upon the lands and tenement, which he was content should be affected therewith, and offered to assign and dispone so much of the tenement as would satisfy the same.

THE LORDS found the suspender personally obliged, but only in so far as the value of the tenement might extend; in respect the clause in the disposition mentioned the sum to be paid, which imports a personal obligation, and whereby the suspender, accepting the disposition, is obliged to do diligence, to have sold the tenement, and paid her therewith; and therefore found the letters orderly proceeded, superceding execution of the principal sum for a year, that *medio tempore* he might do diligence to sell and uplift.

Fol. Dic. v. 2. p. 39. Stair, v. 1. p. 147.

No 207.

1675. December 8. THOMSON *against* The CREDITORS of THIN.

WHERE a disponee is not taken bound personally to pay, but the subject only disposed, *with the burden of debts*, he is not personally liable by acceptance, further than to the extent of his intromission.

Fol. Dic. v. 2. p. 39. Stair. Gosford. Dirleton.

* * This case is No 6. p. 3593.

No 208.

1678. December 3. LORD WAMPFRAY *against* JOHNSTON.

ACCEPTANCE of a disposition, binding the receiver to pay the granter's debts, makes the receiver liable universally, without regard to the extent of the subject disponee. See APPENDIX.

Fol. Dic. v. 2. p. 39. Fountainhall, MS.

No 209.