

No 15.

\*\*\* This cause was appealed.

THE HOUSE OF LORDS, 11th April 1771, 'ORDERED AND ADJUDGED, that the appeal be dismissed, and that the interlocutors therein complained of be, and are hereby affirmed.

1789. February 13.

GEORGE WADDELL *against* ROBERT COLT.

No 16.

Disposition of all sums of money due by bond, does not comprehend those due by heritable bonds.

THE PROPRIETOR of the estate of Garturk executed a settlement in favour of Mr Colt, by which he conveyed to him that estate, and assigned to him 'the hail sums of money he should have belonging or addebted resting and owing to him by bonds, &c. with the said bonds themselves,' &c.

Mr Waddell, the heir-at-law, raised an action declaratory of his having, in that character, right to certain heritable bonds that belonged to the deceased, and to all other debts heritably secured, which were due to him at the time of his death; and,

*Pleaded*; When any debt is heritably secured, it is understood to have become secondary to the real or heritable right of lands thereby acquired, which last is therefore the immediate and proper object of the law. Hence it no longer comes under a description belonging to moveable subjects. Thus an assignation, *mortis causa*, to 'all debts and sums of money,' was found not to comprehend an heritable bond; Mochrie *contra* Lind, No 13. p. 5018. And in the case of David Ross *contra* Elizabeth Ross, No 15. p. 5019, the COURT, by a judgment affirmed on appeal, determined, that a disposition 'of all debts and sums of money' was not effectual to convey heritable debts.

*Answered*; As no argument can be safely drawn from one *quæstio voluntatis* to another, unless when the respective circumstances accurately correspond, it seems improper to consider the cases that have been quoted, as precedents with respect to the present. Independently of precedent, the express conveyance in question, 'of the whole sums of money due by bonds,' would seem inconsistent with the supposed exception 'of sums of money due by heritable bonds.'

THE LORD ORDINARY, 'in respect of the practice of the Court, and particularly in the case of David Ross, repelled the defences.'

On advising a reclaiming petition and answers, the COURT considering, as the Lord Ordinary had done, the decision in the case of Ross to have established a rule, Adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Swinton*. Act. *M. Ross*. Alt. *Blair*. Clerk, *Sir J. Colquhoun*.  
S. *Fol. Dic. v. 3. p. 250. Fac. Col. No 61. p. 111.*

General assignation derogates not from a prior special destination. See PRESUMPTION.—See CLAUSE.—See APPENDIX.