

1795. May 14.

The EARL of FIFE *against* MRS MARTHA M'KENZIE and ELIZABETH FRASER.

ALEXANDER UDNEY DUFF, by postnuptial contract of marriage, disposed ' to and in favour of his wife, Mrs Margaret Duff, in case she shall happen to survive him, and to her heirs, executors, and assignees, the whole *moveable goods, gear and effects*, which shall belong to him at the time of his decease, including heirship moveables, household furniture, outfit and insight plenishing, silver plate, jewels and linens; and in general, *all moveable goods and effects*, of whatever kind and denomination, shall happen to belong to him at the time of his death, and that free of all debts and deductions whatever.'

Mr Udney Duff predeceased his wife; and on her death, the Earl of Fife, her general donee, brought an action against her Husband's Executors, in which he claimed, under this clause, his whole personal estate, amounting to above L. 15,000, consisting of bonds and bills, and L. 400 in bank-notes, found in his repositories at his death. On the other hand, Mrs Martha M'Kenzie, and Elizabeth Fraser, Mr Duff's Executors, contended, that the clause reached *corpora mobilia* only, in contradistinction to *nomina debitorum*; and

Pleaded: If it had been intended to convey bonds and bills, or even money, they would have been expressly enumerated; but so far from this, the clause is expressed in technical language, which is understood to comprehend only moveable goods properly so called, not debts nor ready money; Besides, as the clause enumerates household furniture, silver plate, &c. it can only carry things of the same sort with, and not of greater value than, those enumerated; Dirleton, *voce* INHIBITION; Clerk Home, p. 93. 18th February 1737, Cuninghame against Livingston, *voce* PRESUMPTION; Ker against Young, No 29. p. 2274; Fraser against Smith, No 59. p. 2322; Fac. Col. No 235. p. 250, 17th November 1758; Johnston against Wilson, *voce* PRESUMPTION.

The Executors also took notice of some particular circumstances attending the execution of the deed, from which they inferred, that it was not the granter's intention to include his money estate; and they founded on Fountainhall's report of the decision, 13th December 1698, Henderson against Bier, as tending to support their construction, though, upon special circumstances, an opposite judgment was given, *voce* GENERAL ASSIGNATION.

Answered: The word 'goods' comprehends executry of all kinds, and is so applied in the statutes 1540, c. 120.; and 1690, c. 26. In like manner, 'gear,' both in law and in common language, means ready money, and *nomina debitorum*, and is accordingly expressly used in that sense in the act. 1669, c. 19. The words 'goods and gear,' taken together, therefore, clearly carry the whole personal estate; Henderson against Bier, *voce* GENERAL ASSIGNATION. It is true, that in the cases referred to by the defenders, a more limited signification

No 61.

A clause conveying all moveable goods and effects, found not to convey *nomina debitorum*, nor bank-notes. See No 59. P. 2322.

No 61. was given to the words. But this arose from its being apparent from the remainder of the clause, that the granter meant to use them in a more confined sense, a reason which does not occur here; for although household furniture, silver plate, &c. are afterwards enumerated, yet the expression used in that part of the clause does not restrict the grant to these and similar articles. On the contrary, it conveys Mr Duff's whole moveable goods, gear, and effects, 'including' these particulars; from which it is evident, that other articles of greater value, not enumerated, were meant to be conveyed; and these can only be ready money and *nomina debitorum*.

THE LORD ORDINARY took the cause to report.

THE COURT, on the grounds stated for the defender, unanimously found, 'That the conveyance in the contract of marriage by Alexander Udney Duff, in favour of Mrs Udney Duff, in the event of her surviving him, extends only to the *ipsa corpora* of moveables, and does not include debts or sums of money.'

A reclaiming petition for the Earl of Fife was refused without answers, 16th June 1795.

Lord Ordinary, *Eskgrove*.

Act. Dean of Faculty *Erskine, J. W. Murray*.

Alt. *Tait, Monypenny*.

Clerk, *Home*.

R. Davidson.

Fol. Dic. v. 3. p. 126. Fac. Col. No 169. p. 399.

* * In this case there were cross appeals.—THE HOUSE OF LORDS ORDERED and ADJUDGED, That the original and cross appeals be dismissed, and that the interlocutors therein appealed from be affirmed.

SECT. IX.

Liberty of Disposing without Consent.—Making Provisions a Burden on Lands.—Obliging to lay out on Sufficient Security.—General Abrogatory Clause in an Act of Parliament.—Relieving from Public Burdens.

No 62.

1724. December 9. ELSPETH WHITE against BESSIE MOOR.

A person took a disposition to himself and wife in life-rent, and his children in fee; reserving power to dis-

PATRICK WHITE, sometime after marriage with Bessie Moor, purchased a tenement in Aberdeen; and there being no contract of marriage betwixt them, he took the rights thereof to himself and wife in life-rent, and to the heirs of the marriage in fee, but with special provision and condition, 'That it should be lawful for him to burden the said houses with any sums of money, less or more,