

No. 3.

1737. *February 2.* CHARLES BURNET *against* MARY BURNET.

LEGACY in these words: "Whatever money may be remaining over and above the fore-mentioned bequeathments, let it be put out upon provision either here or in Scotland, and the yearly provision of that money be given to my sister during her life, and after her death that the stock be divided equally amongst my brethren's children:" The Ordinary found that the fee of the money was established in the children of the testator's brothers immediately after his death, pure and not subject to the condition of their surviving the sister, the liferentrix, and that the proportion of such of the children as are deceased belong to their nearest of kin; and the Lords adhered, 24th June 1736; but after a reclaiming bill and a hearing in presence, the Lords found that only such children of the brothers as shall exist after the death of Mary Burnet, (the sister and liferentrix) have right to this legacy, which was finding in effect the legacy conditional; though they avoided *data opera* using that word. *Vide* 9th November 1740, Campbell *against* Campbell, *voce* FIAR.

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No. 4.

1737. *February 18.* DR CUNNINGHAM *against* LIVINGSTON.

LEGACY of household furniture and moveables in such a house or elsewhere, does not comprehend *nomina debitorum*; nor *2dly*, current coin, whether foreign or domestic. (See No. 14. *infra*.)

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No. 5.

1738. *June 15.* PHIN *against* GUTHRIE.

ONE executor nominated deponed, that when the testament, naming him executor, and giving the pursuers certain legacies, was signed, the testatrix told him, and he believed, "that after payment of the legacies there would be something over more than a sufficient gratification for his pains, and he understood he was to have no more than a reasonable gratuity for his pains," though the surplus over the debts and legacies should happen to be more; that he told the Lady Northberwick, by whose advice the defunct settled her affairs, that after receiving a proper gratuity to himself, he was willing to dispose of the surplus as the Lady should direct.

because he understood the defunct's will to be such; and the Lady Northberwick by a writing during the process, ordered the said surplus to be distributed among the pursuers in proportion to their respective legacies, because she knew that was the defunct's will and intention: The Ordinary, in respect that the pursuers were not nearest of kin, found the executor liable only for the legacies in the testament, because there cannot by our law be nuncupative legacies above L.100 Scots: But the Lords found him liable to account in terms of his oath, *ex parte*, indeed, because the executor would not answer;—but the petition distinguishes ingeniously enough in that point betwixt legacies and *fidei-commissa*.

No. 5.

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1738. November 19. CREDITORS OF DOUGLAS of Glenbervie.

A DISPOSITION being burdened with legacies, these legacies were found preferable to the creditors of the disponee who had arrested.

No. 6.

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1740. November 11.

MARGARET CAMPBELL, and M'MILLAN her Husband, *against* CAPTAIN WILLIAM CAMPBELL.

PROVOST CAMPBELL, five or six years before his death, made a general disposition of all the effects he should have at his death to his son William Campbell; and about five years thereafter his younger son David Campbell dying in a voyage from America, bequeathed his whole effect to his father, and in case of his decease to his sister Margaret Campbell. The Provost survived his said younger son, but died before he had accounts of his son's death; and in the competition for the son's effects betwixt William Campbell in the right of the general disposition from his father the universal legatee and his sister Margaret the substitute, the Lords found that the said substitution does still subsist, notwithstanding the Provost's surviving his son, and that it was not evacuated by the Provost's general disposition five years before the son's testament; for the most part thought that the Roman law anent vulgar substitutions does not hold with us.

No. 7.