

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.