

to defaize their own parts one to another *pro rata portione*, though there was no clause, paction, or obligation tying them thereto. I think this would not hold in the civil law, and was a stretch thereof, and dissonant to its principles. In June, 1677, the same case occurred to be disputed again. *Vide February, 1680.*

Advocates' MS. No. 574, § 3, folio 285.

ANENT TESTAMENTS AND INVENTORIES.

IF a creditor give up a person as his debtor, in his testament, in such a particular sum, if a greater sum be found to be in the debtor's bond, it seems to be *legatum liberationis pro reliquo*; and which legacy will sustain in so far as amounts to the dead's part of the moveables, and no farther. See Balfour's Practicks, *titulo 19, Of Payment, numero 7*. See *alibi*, this remarked at large in other papers; *Vide supra, numero 421, November, 1673, Sir James Douglas against Hayston. Vide Gudelinum de jure novissimo, libro 2, cap. 9, pag. 62.*

1677. *June*.—A man with his own hand, at his marriage writes an inventory of all the goods, and inventory of his house, and subscribes it; and among other articles he sets down a mazer cup of Mævius. The writer dying, and Mævius also being dead, the executors of Mævius pursue the executors of the writer of the inventory, for delivery of that cup. *Quæritur, Imo*, if this will be a sufficient constitution of the debt, viz. his declaration in that inventory, since the expression is ambiguous, and may be expounded, The cup I bought or got from Mævius; yet in strict propriety of speech, it imports the cup belonging to Mævius. It may be lent to me, or consigned and depositate in my hands *custodiæ causa*: only the placing it in the inventory of his own goods, the diuturnity of time, and the silence, do much fortify the possession, and weaken the claimer's right. Yea, even an inventory given up by a party at his death, in his testament, does not so prove but it may be questioned by creditors, as short given up, or undervalued; like our datives *ad omissa, or male appetiata. Vide, Novellam 48, de Jurejurando a moriente præstito super mensuram suæ substantiæ*, and Gothofred's notes there.

In the abovementioned pursuit by Mævius's executors, the inventory being questioned as holograph, and the subscription denied, the judge repelled this, without putting them to adminiculate the verity of the subscription, because it consisted in his own private knowledge that that was his hand write, which he knew very well.

This seems to have been evil determined, for he should not decide *secundum privatam scientiam*, but, *secundum allegata et probata*:—*eleganter Vinnius, ad § Institut. de Officio judicis. Vide immediate supra, numero 573.*

Advocates' MS. No. 574, § 4, folio 285.

1677. *June*. WILLIAM SYME against HAMILTON of Bardowie.

WILLIAM SYME, as assignee constituted to a bond owing by Hamilton of Bardowie, pursues Bardowie's son upon the passive titles. He alleged absolvitor from the passive title, as vitious intromittor with his moveable goods and gear; because