

1674. December 2. CRANSTON against BROWN.

No 10.

A special legacy of an heritable bond being left in a testament, in which the testator's heir was named executor and universal legatee, the legacy was sustained, for it implied a *non repugnantia*, so that he could not quarrel the legacy, and at the same time take the benefit of the testament.

*Fol. Dic. v. 2. p. 309. Stair.*

\*\*\* This case is No 15. p. 8058. *voce* LEGACY.

1698. December 15. STRAITON against WIGHT.

No 11.

A GRATUITOUS bond granted by a minor being reduced by his heir, the creditor insisted for an equivalent out of the executry, upon this footing, that the bond implied a legacy, which the minor could grant, minors being *testamenti capaces*. *Answered*, The bond being reducible by the granter himself, it can infer no warranty against him or his goods, neither can it have the effect of a legacy; for whatever might have been the granter's intention, he has not expressed the same either by word or writ, *et sic quod voluit non fecit*. THE LORDS found they could not transubstantiate the bond into a legacy, and therefore assolizied.

*Fol. Dic. v. 2. p. 308. Fountainbull.*

\*\*\* This case is No 10. p. 10326. *voce* PERSONAL AND TRANSMISSIBLE.

1711. July 20.

ISOBEL MONCRIEFF; and her HUSBAND, against CATHARINE MONYPENNY, Relict of GEORGE MONCRIEFF of Sauchop.

No 12.

IN the process at the instance of Isobel Moncrieff, as nearest of kin to George Moncrieff her brother, against Catharine Monypenny his relict, the LORDS, 14th July 1710, *vide* TESTAMENT, having reduced the testament; which sentence was, upon the relict's appeal, affirmed in the House of Peers, Isobel Moncrieff and her husband pursued Catharine Monypenny for her intromissions with her husband's effect's.

A written testament reduced for informality, not sustained as a nuncupative legacy.

*Alleged* for the defender; The written testament, though reduced, must subsist as a nuncupative testament to the extent of L. 100 Scots to each legatary, 7th July 1629, Wallace *contra* Muir, No 9. p. 1350.; because, the defunct's