

1676. July 21.

TRAILS *against* GORDON.

## No 12.

Special legacies suffer not abatement with general legacies, when left in the same writ; but because legacies are ambulatory, a legacy was found to derogate from a former legacy.

UMQUHLE George Gordon, messenger, having granted a bond of provision of 8000 merks, to Trails his oye, and ordained his son Mr George to satisfy the same, by assigning such bonds as he thought fit, and having also granted assignations on his death-bed to the said Mr George of the most part of his bonds; Trails pursues him for payment, who *alleged*, that the pursuer's provision on death-bed is but effectual as a legacy against dead's part, and albeit the assignations made to the defender were accounted as legacies, yet they are as special legacies, and the pursuer's provision is but a general legacy; and it is a certain rule, that special legacies are never affected or abated by general legacies. It was *answered*, That the rule holds in legacies granted in the same writ, and at the same time; but all legacies being ambulatory, the testator may alter or recal them any way he pleases. *Ita est*, The pursuer's provision is long posterior to the assignation granted to the defender, and bears expressly to be paid by him in money, or by assignment of the defunct's bonds, which therefore burdens the former assignations, which are effectual as legacies;

Which the LORDS found relevant.

*Fol. Dic. v. 1. p. 535. Stair, v. 2. p. 456.*

1676. December 14.

MITCHEL *against* LITTLEJOHNS.

## No 13.

A BOND of provision, granted upon deathbed, obliging the defunct, his heirs, &c. though it could only take place in the dead's part, was yet found preferable to a legacy, though the legacy bore an obligation upon the heirs and executors to pay the same, for a legacy is only a succession, and cannot therefore compete with a *jus crediti*.

*Fol. Dic. v. 1. p. 535. Stair. Dirleton.*

\*\*\* This case is No 39. p. 3216. *voce* DEATHBED.

\*\*\* Gosford likewise reports it :

1676. December 13.—KATHARINE MITCHEL having intented action against the eldest son of John Littlejohn, for payment of 600 merks yearly, conform to a bond of provision made to her by the said John Littlejohn, her deceased husband, there being an allegiance proponed, that the bond was granted upon death-bed, and so could not burden the heir; the LORDS, by their interlocutor, 17th June 1676, did sustain the action, she proving that he had convalesced, and went to kirk and market, after the date of the bond; but, thereafter, the children of the first marriage, besides the heir, compearing, it was *alleged* for