

No 17.

where the special and universal legacies are both in the same writ, of one date, and *in eodem corpore juris*, yet where they are in separate writs, there is no doubt but an universal legacy in a posterior testament will annul and evacuate a special legacy in a prior writ, seeing the last testament is a virtual revoking of all prior deeds; neither is the testament so general, but is a special distribution of his means, and much more equal than to give his daughter Skirling's bond *jure præcipui*. The LORDS thought this point deserved a hearing in presence.

1710. November 24.—THE LORDS advised the debate in the cause mentioned *supra*, 10th June 1710, betwixt John Johnston and Callander of Dorater; and having read Thomas Wilson's testament, they observed he had given up a list of all the bonds and debts owing to him, even where the sums were but small, and had made no mention of Skirling's bond, though extending to 9000 merks; and in the end, as having recollected his memory, he sets down a bond of 1080 merks owing to him by Durham of Duntarvy, which he declares he had forgot. Now, being so anxious to make a full list, how was it possible he could omit so considerable a bond as Murray of Skirling's? and therefore it was urged he designed the substitution made by him in the bond should stand, and not be revoked by this subsequent clause, appointing all his debts to be equally divided among his children. On the other hand, it was said, To let that first provision stand, gave Jean his daughter a great deal more of his fortune than his son and other children were to get, which can never rationally be presumed to have been his meaning and intention. For *first*, She got at least the half of the 9000 merks, if not *jure accrescendi* by her sister's death the whole; and then she came in equally to a third of the rest of his means and estate. The LORDS, by plurality, found the posterior clause of an equal distribution did not derogate from the prior substitution, and therefore preferred Jean Wilson, and Dorater her son, to Johnston, as to her share of Skirling's debt.

Fol. Dic. v. 2. p. 133. Fountainhall, v. 2. p. 576, & 600.

1712. December 16. MONRO against MONRO.

No 18.

A bond of provision undelivered was found effectual, and that it was not revoked by a general assignation in favour of another child, of the granter's whole moveables, goods and gear.

Fol. Dic. v. 2. p. 133.

* * * This case is No 33. p. 5052. *voce* GENERAL DISCHARGE.