THE LORDS found the disposition and destination by Sir George Campbell of his interest in the African Company, in favours of Dame Mary Campbell and her husband, and Dame Anna M'Morran, revoked, and conveyed to and in favours of the Lord and Lady Cessnock, by the revocation and general disposition therein mentioned, and therefore preferred Mr William Hall their assignee. No 16.

Fol. Dic. v. 2. p. 132. Forbes, p. 243.

1710. *June* 10. JOHNSTON *against* CALLENDER.

No 17.
A person taking a bond for a sum, substituted two of his children in the fee, and afterward, by testament, appointed his means to be to be equally distributed among all his children. Found that this testament did not derogate from the prior substitution.

THOMAS WILSON, skipper in Leith, left an opulent estate behind him, which, by his testament in 1647, he ordained to be equally divided betwixt his three children, John, Thomas, and Jean. There was 9000 merks of his fortune owing by Murray of Skirling, by bond in 1644 payable to himself, and failing of him by decease to Marion and Jean Wilsons, his two daughters. Marion dying, Jean, who married Ludovick Callander of Dorater, lays claim to the said whole 9000 merks in Skirling's hands. John having squandered away his part of the father's means, retires to Batavia, leaving one daughter behind him, who married one called Steel, who had by her a daughter, with whom John Johnston one of the keepers of the Parliament-House transacts; and upon a bond granted by her to him, he charges her to enter heir to John Wilson her grandfather, and Thomas her granduncle, and thereon adjudges Skirling's 9000 merks; and now pursues Jean Wilson, her aunt, and Dorater her son, to count and reckon for the third of that money, and repay it to him, seeing by the testament John had right to a third of his father's means. *Alleged* for Jean Wilson and Dorater, that John her brother had no interest in Skirling's debt, because, by the original conception of the bond, she and her sister Marion were expressly substituted and provided to the fee. *Answered*, That is very true, but by testament three years subsequent to that destination, he ordains his whole estate to be equally divided amongst his three children, which was a clear revocation of the first appointment, and brings Jean only to a third of that money. *Replied*, The substitution in the bond being of the nature of a special legacy, can never be altered or taken away by a general clause in a posterior testament, unless it had specially revoked the same, and derogated therefrom, which he has not done; which is clear from that elegant text, l. 41. § 3. D. De legat. III. where he concludes, non est verisimile eum qui nihil aliud nisi hæc specialiter legavit, ad filium illud legatum generali sermone transferre voluisse; and Gothofred gives several instances of this in his notes, ad l. 80. D. De regulis jur. In toto jure generi per speciem derogatur; and the LORDS have decided conform, 27th January 1679, Aickman against the Successors of Boyd, No 10. p. 11347. where a subsequent universal legacy did not take away a prior special destination. *Duplied*, This position wants not its limitations; for though it may hold

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.