

No 20.

law, who plead their succession only in virtue of his implied will : And though heirs whatsoever, in the charter, do mean heirs of line, and would have carried the estate to them, in case no other deed had been executed by the Major, yet since he had formerly pointed out those whom he intended should succeed him in the estate, that estate must descend to these heirs.

That a disposition of one's estate to certain persons does sufficiently express the disponent's intention, that it should go to them ; and, therefore, as necessarily imports an obligation upon his heirs at law to denude in favour of these persons, as a bond of tailzie would have done.

That the heirs of tailzie may be considered as the Major's assignees or disponees ; and, therefore, must succeed preferably to his heirs at law, who are to be considered as much under an obligation to fulfil the Major's deed in their favour, as they would have been to make over the estate to any other person to whom the Major might have disposed it, without procuratory or precept.

THE LORDS found, that Major George Skene his expeding a charter, and taking infestment thereon, after the tailzie, upon the procuratory in the disposition, conceived in favour of heirs or assignees whatsoever, prior to the tailzie, did not import a revocation or alteration of the said tailzie ; and, therefore, repelled the objection proponed for Dame Jean Skene and her Husband.

Determined upon a hearing in presence.

Act. *Duncan Forbes Advocatus, & Jo. Forbes.* Alt. *Ro. Dundas.* Clerk, *Gibson.*

Fol. Dic. v. 4. p. 118. Edgar, p. 205.

No 21.

1732. July 7.

STRACHAN *against* FARQUHARSON.

ALEXANDER FARQUHARSON, in his latter-will and testament, appointed his wife executrix and universal legatrix of his hail goods, gear, moveable debts, sums of money, &c. At that time he was creditor in a bond for 2000 merks, payable to himself ; and, failing of him by decease, to his only lawful son, John Farquharson, their heirs, executors, or assignees. The question occurred, Who had right to this bond ; the wife, in virtue of her universal legacy, or the son, in virtue of the special destination in his favour ?—The LORDS found the universal legacy did not derogate from the special destination.—See APPENDIX.

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

No 22.

1734. July 12.

Lady KINFAUNS *against* Mrs LYON.

A RELICT was provided, by her contract of marriage, to a share of the household plenishing. In a pursuit against her husband's Representatives, it

was found, that this being a disposition *inter vivos*, the heirship moveables were included. See APPENDIX.

No 22.

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

* * * A similar decision was pronounced, 18th November 1737, Boswell against Boswell; see APPENDIX.

1735. July 3.

MONRO *against* MONRO.

No 23.

A CREDITOR in a bond secluding executors, assigned the same to a person, his heirs and assignees, but took a backbond, declaring the assignation to be a trust, in order to do diligence. This was found not to presume any alteration of will, nor to make the bond moveable.—See APPENDIX. See No 8. p. 11344.

Fol. Dic. v. 2. p. 134.

1742. July 27.

WILLIAM JACK, &c. *against* JOHN LAUDER.

No 24.

THE deceased Hugh Kennedy disposed his heritable and moveable effects to the said John Lauder, and, of the same date with the disposition, he made a codicil, wherein, in case of his death, he desires that Bailie Muirhead's L. 40 bill may be disposed of as follows; viz. to William Jack L. 10 Sterling, and to three other persons named, each L. 10. Some days after the date of the codicil, he received payment of the said L. 40 bill; and before he died, he inclosed the codicil in a piece of paper, and directed it thus: "Hugh Kennedy, his will and disposition, not to be opened; but, in case of his death, to be opened by Major Robertson."—After Hugh Kennedy's death, Margaret Burns, in whose house he staid and died, and who had the keys of his repositories, gave the foresaid packet to Major Robertson, and with it L. 29, to defray the expense of the testator's funerals; which sum, he in the codicil desired might be laid out thereon, and that the Major would take the direction and oversight thereof, and for which L. 29 the Major granted his receipt to Margaret Burns, to account to her and all others concerned.

A testator's receiving payment of a bill, which he had bequeathed to certain persons, found to be a revocation of the legacies.

William Jack, and the three other legatees, brought a process, both against the Major and Margaret Burns; against the first, on his receipt for the L. 29, and against Margaret, not only for that L. 29, but likewise for the remaining L. 11, as being the L. 40 contained in Muirhead's bill, and entrusted to her keeping by Hugh Kennedy; and which, being referred to her oath, she deponed, That she saw Bailie Muirhead's relict pay the L. 40 bill to Mr Kennedy, and that soon thereafter, he took L. 40 out of his trunk, which he told her was the money he had received in payment of the said bill, and which L. 40 he delivered to the deponent with the codicil, ordering her to keep the same