

No. 6. 1742, Feb. 3. W. ROBERTSON *against* MRS JEAN KERR.

See Note of No. 6, *voce* LEGITIM.

No. 7. 1742, June 25. BINNING *against* CONTIE.

ONE Binning in Forfar on the narrative of mortality, and being then sick but sound in memory and judgment, made a disposition general both of his heritage and moveables in favours of his brother his next heir, (with a substitution to his children, &c. *quoad* the heritage,) and burdened the right with certain sums which in one place he calls legacies and donations after-mentioned, and he named several sums to be paid to several persons, and two are expressed thus; "and lastly, I bequeath to the Church of Forfar for the use of the poor 200 merks; moreover I leave to Janet Contie a feather-bed, bolster, &c." Binning the disponee neglected this deed and served heir to the defunct, and was pursued for payment of some of the sums wherewith the right was burdened. His defence was, that this was a testamentary deed,—which the Lord Minto repelled, and decerned. Binning reclaimed,—and some of us had a further difficulty, whether the defender was liable since he neglected the deed, and it contained no obligation to possess by none other, nor to pay this sum? However the Lords by a great majority refused the bill without answers,—and most rightly.

No. 8. 1742, Nov. 39. THE HEIRS OF TENNENT *against* HIS TRUSTEES.

THE Lords found Finlayson and M'Gilchrist the instrumentary witnesses liable though they were two of the trustees. 2dly They found the defenders proof more pregnant, and therefore assoilzied from the reduction.

No. 9. 1743, Dec. 14. FORDYCE *against* RELICT AND CHILDREN OF FORDYCE.

THE question was, Whether a sort of conveyance of a tack to younger children in a testament homologated by the heir was good against a subsequent heir? We were very doubtful. Kilkerran, Arniston, and Murkle did not vote; but the rest sustained the homologation, and adhered to the whole interlocutor.

No. 10. 1749, Nov. 7. SMITH *against* TAYLOR.

A TESTATOR telling his nearest of kin that he left his executry to him and other two equally, a process was brought on it; and the fact proved by the oath of the nearest of kin. But we found that the verbal testament could not convey his executry; but found that the two pursuers interests were to be sustained as legacies, and that there were as many legacies as persons, and sustained them to the extent of L.100 each.—N. B. Kilkerran had only sustained them as one legacy of L.100 between them.