

No 15.

Marshall, No 8. p. 6839.; Couts *contra* Straiton, No 12. p. 6842. The Lords never sustained informal obligations for the restricted sum of L. 100, except either when the greater sum was payable at different terms, which made it look like different obligations; or when the share of each of several co-obligants not bound jointly and severally, was under L. 100; or in the like circumstantiate cases. But however hard it might be thought to annul a bond altogether in favours of a covetous debtor upon such a pretence, there is no such hardship by annulling *simpliciter* an informal assignation, because, the debt standing secure by the bond, a right thereto may be again made up, when this assignation is out of doors. Nay farther, a bond for a divisible sum may stand good for a part, and be null as to the rest; whereas the creditor's right by the assignation, being *jus individuum*, must be effectual for the whole sum assigned, or not at all; and restricting the assignation to a part of the sum, could not hinder the cedent to renew it *quoad* the superplus, or to do diligence for it in his own name. Albeit a nuncupative testament for more than L. 100 be sustained for that sum, no argument can be drawn from thence in favours of conveyances *inter vivos*; because, law indulgeth many defects in testaments, that the last will of dying persons may have effect; as a testator who cannot write is allowed to subscribe by a notary and two witnesses, &c.

THE LORDS sustained the assignation granted to James Sclanders with the adjudication following thereon, in so far as extends to the sum of L. 100 with annualrent thereof from the date of the decret, and allowed both the adjudgers to come *in pari passu*.

Forbes, p. 427.

S E C T. III.

Testament, where the Executor is a subscribing witness.—Retour.—
Verbal Legacy above L. 100.

No 16.

A testament, in which a person nominated executor, was subscribed by him as witness. The Lords reduced it *quoad* the nomination, but sustained it *pro reliqua parte*.

1613. July 1.

The Nearest of Kin of Umquhile MARION CRICHTON, Lady Inverleith, *against*
BISHOP of GLASGOW.

In an action of reduction pursued by the nearest of kin of umquhile Marion Crichton, Lady Inverleith *contra* the Bishop of Glasgow, and remanent Executors, for reduction of the Lady's testament, the Lords assoilzied from the first reason, which was founded upon the alleged fraud used by Thomas Young, in making the Lady give command to the notary to subscribe the said testa-

ment unread, against her express command given by her to the said Thomas Young, whereby she ordained him to direct the executors to divide her hail goods among her brother's and sister's bairns, which was offered to be proved by the witnesses inserted in the testament.

No 16.

Item, The LORDS assolizied from the second reason, whereby the testament was quarrelled of nullity, as wanting a sufficient number of witnesses, in respect Thomas Young was witness, and was executor nominated, and so could not be witness, in respect the said Thomas had subscribed witness, and had renounced after the decease of the Lady, and when the party would have quarrelled the renunciation; it was found by the LORDS, that the testament was null, in so far as he was nominated the executor; and so he might be witness to the rest, *et sic quod testamentum pro una parte et non in toto*; and yet the LORDS found, that if it might be proved, that Thomas renounced *post tractatum et accepta preelia*, the testament to be null; which part was referred to the executor's oath.

Fol. Dic. v. 1. p. 464. Kerse, MS. fol. 126.

1619. February 4. LANGTON against ———.

No 17.

FOUND that a retour falling *pro parte* is null *in toto*.

Fol. Dic. v. 1. p. 464. Kerse, MS. fol. 179.

1629. July 11. WALLACE against MUIR.

No 18.

A VERBAL legacy made after the defunct's testament, although the same did exceed L. 100, yet being restricted under the said sum, may be proved by witnesses.

Fol. Dic. v. 1. p. 464. Auchinleck, MS. p. 120.

* * * See Durie's report of this case, No 9. p. 1350, *voce* BASTARD.

1629. December 1. EXECUTRIX of SCOT against RAE'S LEGATEES.

No 19.

THE Executrix of Sir William Scot is pursued by Arthur Rae's Legatars for the legacy left to them by particular ticket of the testators, done after making of the testament, albeit the same was not contained in the body of the testament, and albeit these legacies be not confirmed in testament.

Fol Dic v. 1. p. 464. Durie, p. 472.