

- No 2. legatar should have the price of the said gear by the law, as if she had left another man's gear wittingly. The Commissaries absolved the defender from the petition, and decerned, that neither the gear acclaimed, nor price thereof, was owing to the legatar; because, by the law of Scotland, neither heritage nor heirship may be disposed upon death-bed, and all such disposition is null in itself.

Fol. Dic. v. 2. p. 308. Maitland, MS. p. 207.

1624. January 22. DRUMMOND against DRUMMOND.

No 3.

DRUMMOND *alleging*, That umquhile David Drummond, servitor to the Earl of Holderness, had, by his testament, made in England, left to him in legacy the sum of L. 50 Sterling, owing to him by the Laird of Spot, pursued Archibald Drummond, executor to the defunct, to pay him the said sum. It was *excepted*, That the defender should be assoilzied, because the said sum was heritable, and could neither fall under testament, nor be left in legacy. It was *answered*, That the sum being expressed in the quantity, albeit the designation was erroneous, yet the legacy was valid in the sum, and behoved to be paid by the defender, off the readiest of the defunct's free gear, which far exceeded the quantity of the sum left in legacy, seeing, of the law, *legatum rei alienæ licet non directe valet, tamen ejus pretium de prestandum est*. In respect of the which reply, the LORDS repelled the exception.

Fol. Dic. v. 2. p. 309. Haddington, MS. No 2970.

* * Durie and Spottiswood's reports of this case are No 10. p. 2261.
voce CLAUSE.

1664. June 16. MURRAY against The EXECUTORS of RUTHERFORD.

No 4.

Ignorantia juris non excusat, etiam in mulieribus; for instance, that a bond, moveable in the wife's name, belonged to the husband.

JAMES MURRAY pursues the Executors of Katharine Rutherford, wife to Doctor Guild, to pay a legacy of 600 merks, left by Katharine in her testament to James, in these words; I leave to James Murray 600 merks, whereof 200 merks are in his hand, due to me by bond; which bond I ordain to be delivered up to him, and four more, to be paid to him. The defenders *alleged*, That they could be obliged no further than to discharge the bond of 200 merks, with warrantice from their own deed. The pursuer *answered*, That the bond belonged to Doctor Guild, the husband, *jure mariti*, and was recovered by his heirs and executors already from the defender; and, therefore, this being *legatum rei alienæ*, the defender behoved to make it effectual, and to pay it out of the defunct's free moveables; especially seeing 600 merks were left, and the adjection