

1683. *November.*OSWALD *against* MORTIMER.

No 6.

FOUND that *nomina debitorum* were comprehended under a legacy of goods and gear. The like was found *contra* John Thomson in Lanark, *anno* 1692.

Fol. Dic. v. 1. p. 339. Harcarse, (LEGACIES.) No 663. p. 189.

. This case is also reported by Fountainhall :

IN the case of James Oswald in Kirkaldy, *contra* Mortimer, reported by Saline ; " THE LORDS found where a man had nominated his wife executrix, and universal intromissatrix, with all his debts, sums of money, goods and gear, and afterwards leaves to ——— a special legacy payable out of his goods and gear ; that this legacy extended and affected even a third of the sums of money and debt, though the testator did not so fully enumerate and repeat them in the legacy, as in the institution of the executor, but said only goods and gear ; which seemed to contradistinguish them from sums of money mentioned by themselves before." And yet goods and gear, *bona et utensilia* seem to be words of a most general and comprehensive signification.

Fountainhall, v. 1. p. 244.

1687. *February.*FAIRHOLME *against* KIRKWOOD.

JOHN KIRKWOOD merchant, for implement of the contract of marriage betwixt him and Rebecca Fairholme, his wife, and for augmentation thereof, having assigned to her all goods and gear, debts, sums of money, rents of lands, and other heritages, and others whatsoever, as well not named as named, which should happen to pertain and belong to him the time of his decease ; providing that he should have a child surviving his wife, that the disposition should be null ; and, in case there were no children, then he disposes to her a shop in the Luckenbooths in liferent, and to James Kirkwood, his nephew, in fee. And the said John Kirkwood having deceased without children, Rebecca Fairholme, as having right by the foresaid disposition, pursues a declarator against the said James Kirkwood, the nephew, for declaring that she has right to the property of the shop in the Luckenbooths ; and that he, as representing his uncle upon the passive titles, ought to be decerned to obtain himself infest therein ; and, being infest, to dispoise the shop in her favours. *Alleged* for the defender, That this being an assignation *omnium bonorum*, which belonged to the said John Kirkwood the time of his decease, it was a donation *mortis causa*, and so could not be extended to lands and heritages ; and, being an assignation only to debts and sums of money, and not conceived by way of disposition, it will only carry the right to the moveables ; but cannot

No 7.

A man granted to his wife, in augmentation of her jointure, an assignation to all goods and gear, debts and sums, lands and heritages. Tho' there were no children of the marriage, the Lords found, that such a disposition only carried right to the moveables and the liferent of the heritage.