

No 29. Which being complained of by bill of advocation, the LORDS found, ' That there was no occasion for confirming the special legacy, and that the legataries were entitled to retain their possession upon caution to answer for the values to all persons having interest, the same being ascertained by appretiation made by persons of skill.'

THE LORDS considered, that were the subjects confirmed, the legataries might pursue the executors to give them up upon caution ; and if so, why not detain them upon caution, as no lapse of time can hurt the creditors in their preference to the legacy.

*Fol. Dic. v. 3. p. 379. Kilkerran, (LEGACY.) No 5. p. 330.*

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1749. November 17. SMITHS against TAYLOR.

No 30.

A PERSON on his death-bed acquainted his nephew, that he intended, that he, along with two others who were his half-neices, should equally share his effects. After the death of the uncle, the neices pursued the nephew, on his implied consent, to make good his uncle's destination. It being found, That the nuncupative testament could not be sustained on the nephew's implied consent, but that the provision in their favour resolved into verbal legacies, a question arose, whether the destination should be sustained only to the extent of L. 100 Scots, to be divided equally among the three, or whether each of them had a claim to the extent of L. 100 separately. THE LORDS found, That the share of each of the legatees should be sustained to that extent.

*Fol. Dic. v. 3. p. 379. D. Falconer. Kilkerran.*

\* \* \* This case is No 9. p. 6594. *voce* IMPLIED WILL.

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1756. February 13.

ARCHIBALD ARBUTHNOT, ROBERT GORDON, and MARGARET GORDON, *against* ELISABETH ARBUTHNOT.

No 31.

A legacy was left, after others, in these words, ' And the remaining L. 600, residue of the said L. 1600, I bequeath to 'A.B.' A

IN July 1750, Robert Arbuthnot, in his marriage contract with Mary Arbuthnot, became bound to secure L. 900 Sterling of his own, and L. 700 of his wife's, with half of the conquest to the wife in liferent, and to the children of the marriage in fee, declaring, That whatever he should be worth at the dissolution of the marriage over L. 1600 should be esteemed conquest ; in case one daughter only should exist of the marriage, the fee of the L. 1600 was declared restricted to L. 800.

Of this marriage there was one daughter, Elizabeth.