

No. 16. 1748. *December 7.* ROBERT LECKIE *against* DAVID RENNIE.

LEGACY found not due to a tutor nominated who did not accept. See TUTOR AND PUPIL.

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No. 17. 1749. *February 25.* JOHN DAVIDSON, and his SPOUSE, *against* EXECUTORS of MR JOHN MURRAY.

LEGACY special by a codicil of some household furniture, which coming into the hands of the Commissary-Court, the legatees petitioned to have them valued and delivered up on caution to pay the appraised value, if the executry were exhausted; which the Commissaries refused until a special title were made by confirmation. But on advocacy we ordered them to be delivered up on caution, that is, remitted with that instruction.—*N. B.* The goods had, when the testator died, been in the legatee's own possession.

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No. 18.] 1752. *December 22.* EMILIA BELCHIES, and OLIPHANT her Husband, *against* SIR PATRICK HEPBURN MURRAY.

A LEGACY of L.300 by Mr Anthony Murray to his niece Emilia Belchies, payable the first term after her marriage, with L.15 sterling annuity from his death till the L.300 should become due, was presumed and found to be revoked by his granting a subsequent legacy, after she was married and had children, of L.1200 sterling, payable the first term after his death, to her in liferent and her two sons in fee, in trust for themselves and all the other children she should have, secluding the husband's *jus mariti* and power of administration, whom failing, to the husband and his heirs of any other marriage, whom failing, to Mr Murray's own heirs and assignees; and the L.300 sterling found not due, though no mention made of it in the last deed. (See DICT. No. 27. p. 11361.)

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No. 19. 1753. *January 2.* JOHN BARBOUR *against* AGNES HAIR.

A HUSBAND, after leaving to his wife by his testament about the half of his effects, delivered to her two bills for above 300 merks, which he in-

dorsed blank. After his death she possessed herself of all his writings. The executors having pursued an exhibition, she exhibited these bills and swore that he gave them to her for her own use. Thereafter she was allowed a proof to astruct the giving them for her own use, and did astruct it by one witness, but the other said only that he bade her lay these bills by themselves. The Lords sustained the relict's right to these bills;—but several were of a different opinion, and thought a wife's possession of her husband's bills indorsed blank was no evidence of his having given them to her in legacy, especially when she was possessed of all his writings; and thought her oath in the exhibition could be no proof for her, and that his giving them in legacy was not competent to be proved by witnesses, no more than a nuncupative testament or legacy above L.100 Scots; and that even the proof in a matter of that delicacy was not sufficient; and that the judgment in this case ought to be the same as if the bills were L.500 or L.1000 sterling value.

See NOTES.