

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 assoilzied 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.*