

1664. December 14. LADY COLVIL *against* LORD COLVIL.

No. 5.

The Lady pursues the Lord Colvil to relieve her of the whole debt, heritable and moveable, of the defunct, his predecessor, because the defunct, in his testament, had named her, his Lady, executrix and universal legatrix, with a special clause, that she should be free of all his debt whatsoever. The defender alleged, Absolvitor, because no deed done by a defunct *in lecto*, or in testament, can pre-judge his heir. The pursuer replied, That this testament was made in the defunct's *leige poustie*. The defender answered, That on death-bed, and by testament, *equiparantur*.

Which the Lords found relevant, and assoilzied.

*Stair, v. 1. p. 241.*

1667. January 31. HENDERSON *against* HENDERSON.

No. 6.

A paper being signed by a party going beyond seas, disposing upon heritage, but in its narrative beginning with the common stile of testaments, and yet giving power to the party to enter, and obtain confirmation from his immediate superior, excluding his heirs of line, and all others, yet so far making it a *donatio mortis causa*, that in another clause it is declared, that if he return home it shall be leisom for himself only to revoke the said writ; and he having returned, and deceased, without making any revocation; the Lords found the writ not to be of a testamentary nature.

*Fol. Dic. v. 2. p. 459. Stair. Dirleton.*

\* \* This case is No. 7. p. 11339. *voce* PRESUMPTION.

1670. July 13.

The DAUGHTERS of SOUTRAY *against* The ELDEST DAUGHTER.

No. 7.

The Laird of Soutray having granted a writ in favours of his eldest daughter, beginning in the stile of a testament, and, after a blank, disposing his lands of Soutray, and his whole moveables, to the said eldest daughter, with the burden of 10,000 merks to be paid to the remanent daughters; the said remanent daughters pursue a declarator of the nullity of the writ; *first*, In so far as being a testament, it contains a disposition of the lands; *2dly*, In so far as the eldest daughter is nominated executrix and universal legatrix, because, by ocular inspection, that part of the writ was blank, and is filled up with another hand, which is offered to be proved to have been done since the defunct's death, so that the executor and legatar not being filled up by the defunct in his own time, and these being the

Testament may subsist without nomination of an executor.

Null, if the executor's name was filled up after the testator's death.

A disposition of land in a testament is ineffectual.