

1767. February 3.

Countess Dowager of CAITHNESS *against* Countess and Earl of FIFE.

No 12.

ALIMENT to a widow from her husband's death till the ensuing Whitsunday, when her liferent annuity fell due, was found to be a burden on the executor, and not on the heir.

*Fol. Dic. v. 2. p. 266. Fac. Col.*

\* \* \* See this case, No 69. p. 431.

1770. January 26.

RACHAEL BROWN and her SISTERS, Heirs of Line of the deceased Dr Brown of Dundee, *against* ALEXANDER BOWER and Others, Trustees appointed by the deceased Dr Brown.

No 13.

A deed containing dispositive words held to be a disposition and not a testament; but the words "means and effects, heritable and moveable," in that deed, found insufficient to convey a proper heritable subject.

UPON Dr Brown's death in 1768, it appeared that he had made a settlement of his affairs; whereby he 'gave, granted, assigned, and freely disposed,' to Bower and others, as trustees, 'all his goods, gear, means, and effects, heritable and moveable;' and by the same deed he nominated the said trustees his 'sole executors, universal legatees, and intromitters with his means and effects,' with power to give up inventories, and to confirm; declaring that the deed was only to take effect after death. Besides large funds, truly personal, Dr Brown was possessed of several heritable bonds, an adjudication upon which he was infeft, and a house in Dundee.

As the deed contained neither procuratory nor precept, the trustees brought an action against Rachael Brown and Sisters, that, as heirs of line, they should make up titles to the heritable subjects, and denude thereof in their favour, in order to their execution of the trust. But to this action it was stated in defence, *1mo*, That the deed which was the title of the action was of a testamentary nature, and therefore ineffectual in law to carry heritable subjects; at least, *2do*, That it could neither carry the adjudication nor house in Dundee. And in support of these it was *pleaded* for the defenders,

*1mo*, Whatever may have been the intention of a party in making a deed, it was nevertheless a clear proposition laid down by all lawyers, that heritable subjects could be conveyed only in a certain form, and not by a deed of a testamentary nature; Haddington, 21st June 1605, Jack, *voce* TESTAMENT; Stair, 21st February 1663, Wardlaw, *voce* HOMOLOGATION; 13th July 1670, Daughters of Soutrie, *voce* TESTAMENT. Resting, therefore, upon this general rule, the deed in question was not a formal and proper disposition *inter vivos*, but was truly of a testamentary nature. For though it did bear the words 'Give, grant, assign, and dispone,' yet in every other respect it bore the characteristic of a testament; it constituted the trustees 'executors