

No 46.

1792. June 22. GRAHAM *against* DENNISTON and Others.

WILLIAM GRAHAM, by a clause in his testament, leaves 'to his brother, sisters, uncle, cousins, a free discharge of every thing they may owe him at his death.' By letter found in the repositories of the defunct, Walter Colquhoun his cousin, then in the West Indies, acknowledges to have received payment of certain bills belonging to the testator, for which he holds himself accountable, and desires the testator to draw on him for the amount. The question occurred Whether this was a debt which fell under the *legatum liberationis* in the testament? The argument against this plea was, That the property of these bills was in the testator, and that Walter Colquhoun held them only as trustee for his account. On the other hand, the bequest seemed to include every claim, from whatever contract it arose. The Court thought the case extremely doubtful, but inclined to the former of these opinions, and found that the amount of the bills did not fall under the *legatum liberationis*.

Fol. Dic. v. 3. p. 398.

1792. Noaember 15.

JANET and JOHANNA SEMPILLS *against* HUGH LORD SEMPILL.

No 47.

A legacy payable at the majority of the legatees lapses by his death before that period. This found to hold even where the executors of the testator were empowered to pay it sooner, if they should think fit.

HUGH DUNLOP conveyed to Hugh now Lord Sempill, his heirs and substitutes, the lands of Bishoptoun and others, by a settlement, burdening him and the lands conveyed with payment of L. 1000 to George Sempill his second son, and L. 500 to Patrick his third brother, &c.; 'and these at and against the next legal term after their attaining to their respective ages of 21 years complete.'

George and Patrick survived the testator, but died in minority.

Janet and Johanna Sempills, two of their nearest of kin, brought an action against Lord Sempill, concluding for payment of two fourths of the sums above mentioned, and

*Pleaded*; That legacies vest *a morte testatoris*, is a general presumption of law, which there is nothing in the present case to overturn. The legacies are not made payable, if the legatees arrive at the age of 21, nor are there any other words employed which shew the testator's intention that they should be conditional. They are simply and unconditionally constituted as burdens on the heir; and the reference to the age of the legatees which is annexed to the term of payment, and in a posterior clause of the sentence, can only have the effect *morandæ solutionis*. The testator thus separated the constitution of the obligation, from the time at which the heir should be obliged to perform it; two circumstances quite independent of each other, and which he may have had good reasons for distinguishing, l. 213. *De verb. sign.* Had he, without making this distinction, merely said, 'I leave to George and Patrick Sempills