

1736. *June 24.*LEGATARS of JOHN CALDWALL, Merchant in Barbadoes, *against* THOMAS CALDWALL.

No 23.

A legacy of L. 20 Sterling for a suit of mourning, found preferable to other legacies of sums of money, to the extent of the probable cost of the mournings.

THESE legatars brought a process, for payment of part of their legacies, against Mr William Caldwell, merchant in Leith, and which, after his decease, was transferred against the said Thomas, his executor, as having some of the said John Caldwell's effects in his hands.

The defence offered was, That there being L. 20 Sterling left to each of the executors for mournings, the defender, who was one of them, was preferable for that sum.

Answered, That the legacy of L. 20 to the defender was only a general legacy, as well as those left to the pursuers; therefore, all of them must come in *pari passu* upon the executry. Neither can the purpose for which it was to be applied vary the rule; seeing it is only mournings to such as are in the defunct's family, and not to strangers, that have a preference as part of the funeral expenses.

Replied, That, where there are special legacies left to certain persons, and sums of money to others, if the executry prove deficient, the special legacies suffer no deduction. Now, this was truly a legacy of a suit of clothes, which the defunct appointed to be taken off by each of his executors after his death; so that it is the same in effect, as if he had legated a suit of clothes, of L. 20 value to each of them; and when such appointments as these are made by the defunct himself, they become part of the funeral charges, which, by the nature of the thing, must be immediately laid out, (as was the case here,) at least before any gratuitous legacy can be paid.

THE LORDS found the defender preferable for the mournings bequeathed, which they modified to L. 10 Sterling, and *pari passu* as to the remainder.

C. Home, No. 25. p. 49.

1740. *June 15.*PRESBYTERY of KIRKCUDBRIGHT *against* ALEXANDER BLAIR.

No 24.

Legacy to pious uses, whether revoked or not.

JAMES BLAIR of Senwick, disposed to the Moderator for the time being of the Presbytery of Kirkcudbright, and remanent members thereof, as trustees for the purposes after-mentioned, the sum of 15,000 merks out of the first and readiest of his means and estate pertaining to him at his death; and obliged his heirs, executors, and successors, to pay the same at the first term after his decease; and for their better security, and more effectual payment of the said sum, he assigned and disposed in their favour, all and sundry debts and sums