No 33. predeceasing the testator; but found, That the same did fall and belong to Richard Miller, her son, as conditional institute; and found, That the legacy is now effectually carried by the confirmation of David Miller, as executor to the said Richard his son; and therefore preferred the said David Miller, and decerned; and found him entitled to the expenses of the extract."

Act. *Arch. Murray.* Alt. *Wa. Stuart.* Clerk, *Justice.*
P. M. *Fol. Dic. v.* 3. *p.* 375. *Fac. Col. No* 234. *p.* 428.

*** Lord Kames reports this case:

JOHN CHALMERS disponed his estate to his nephew, with the burden of certain legacies, one in particular of 150 merks to Isobel Inglis, wife of David Miller, her heirs, executors, or assignees, payable year and day after his death, with interest after the term of payment. Isobel died before the testator, leaving a son Richard Miller, who survived the testator, but died without making up any title to the legacy. His father David Miller, having confirmed himself executor to his son, and having inserted the said legacy in the inventory, brought a process for payment of the said legacy. The nephew of John Chalmers, who, as said above, was burdened with the legacy, *objected*, That, as Isobel predeceased the testator, the legacy was never due. It was found, 'That the legacy having been made to Isobel, her heirs, executors, or assignees, did not fall by her predeceasing the testator, but became due to Richard Miller her son as a conditional institute, and consequently to David Miller, confirmed executor to his son.'

Sel. Dec No 166. *p.* 227.

No 34. 1760. *July* 16. WHARRIE *against* Relations of WHARRIE.

A PERSON, after bequeathing by testament, certain legacies to several of his relations by name, appointed the residue of his fortune to be divided 'equally 'among the relations not herein named.' The nearest relation not named in the testament, though a large legacy had been left to his children, claimed the whole residue, *pleading*, That it could never be the testator's intention to divide the surplus among the whole of his relations, to the remotest degree, who were not named; and that he, being confessedly the nearest who was not named, was justly entitled to that remainder. *Answered*, The pursuer, though no legatee himself, was expressly named in the testament; and his children having got a very large legacy, it could never be supposed to have been the testator's intention, that he and his children should have almost the whole succession.—THE LORDS repelled the pursuer's claim.

Fol. Dic. v. 3. *p.* 378. *Fac. Col.*

*** This case is No 12. p. 6599. *voce* IMPLIED WILL.