

was clear evidence from that memorandum, that this legacy of 2000 merks was meant to be paid to James Gilmour, the testator's brother, who on the widow's refusing to pay this legacy, sued her in an action for that end, and craved a proof for establishing that the memorandum of the settlements was taken by Barclay from the testator's mouth, and was the only rule for drawing them up. The defender *urged* the incompetency of proving by parole evidence any legacy above L. 100 Scots. THE LORDS allowed the proof. See APPENDIX.

Fol. Dic. v. 3. p. 379.

No 39.

1778. July 28 TURNBULL *against* TURNBULL &c.

TURNBULL, in his testament, burdened his Executor with a provision of 2000 merks to a niece, in liferent, and to her children in fee. The niece had several children, who all outlived the testator, but predeceased their mother. After the mother's death, it was *urged* for the heir, That the legacy had fallen. THE LORDS found the legacy had not fallen, as the persons in whose favour it was conceived, had all outlived the testator, and that it now belonged to the nearest of kin to the children of the niece.

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

No 40.

. This case is No 41. p. 4248. *voc* FIAR.

1781. February 13.

THOMAS BOSTON and Others, Children of ELIZABETH HORSEBURGH *against* ALEXANDER HORSEBURGH.

IN 1736, Dr David Horseburgh executed a deed, by which, 'for the love and favour he bore to John Horseburgh of Horseburgh, his brother, he assigned and disposed to him, his heirs, executors, or assignees, the whole effects and debts that should happen to belong, or be due to him at the time of his death, with full power to the said John, whom he thereby nominated his sole executor, (but of whose heirs, it is to be remarked, no farther mention is made) to possess and dispose of the premises.' Then follows a reservation of a power to revoke, 'without consent of his brother above named;' and, after this, an obligation 'upon the said John to pay the Doctor's debts.' And the disposition concludes with a clause dispensing with delivery. But, throughout the whole deed, the mention of heirs is never repeated.

John Horseburgh, who afterwards was married, died several years before the Doctor, leaving a son, the above named Alexander; who, at the Doctor's death, in 1779, obtained himself confirmed executor-dative *qua* dispoinee or cre-

No 41.

A disposition *mortis causa* effectual to the heir of the dispoinee, though he himself predeceased the dispoinee, the dispoinee's heirs having been mentioned in the dispositive clause only, while the rest of the deed seemed to relate solely to the dispoinee himself.