

attain that age ; and a bequest which is not payable till that event has taken place, must be in the same situation.

No 44.

For the purpose, indeed, of reconciling some apparently opposite decisions, of the Roman lawyers, preserved in the Pandects, and which are merely exceptions, on account of particular circumstances, from the general rule, the commentators on the civil law have determined, that where the legacy itself, and the term of payment, are specified in different members of the same sentence, a reference to the age of the legatee annexed to the latter, may be considered as not suspensive of the right, but merely of the term of payment. This distinction however, having no foundation but in a grammatical subtilty, has been rejected by repeated decisions of this Court, with regard to bonds of provision, in which the child's right, arising from the natural obligations of parents, ought to be deemed stronger than that of a legatee, whose claim flows from the bounty alone of the testator ; Edgar against Edgar, No 1. p. 6325. ; Belshes against Belshes, No 2. p. 6327. : Elliot against ———, No 10. p. 6342. ; Executors of Bell *contra* Mason, No 6. p. 6332. Nor even in the law of England is the distinction adopted, except by the ecclesiastical courts, the adherence of which to the doctrines of civilians is peculiarly strict ; Blackstone *loc. sup. cit.*

THE LORDS, moved chiefly by the authority of the Roman law, in which the distinction urged by the pursuers seemed clearly established, found, That the legacy in question having vested in Mr Burnet *a morte testatoris*, was due on his decease to the pursuers as his nearest in kin.

Lord Ordinary, Swinton.
Clerk, Menzies.

Act. Maclaurin, Blair.

Alt. Hay Campbell, C. Hay.

G.

Fol. Dic. v. 3. p. 376. Fac. Col. No 135. p. 212.

1786. February 2. ANDREW DOWIE *against* ALEXANDER MILLIE.

THE father of Alexander Millie accepted a bill of exchange drawn by Andrew Dowie, his son-in-law ; who, in an action for payment, judicially acknowledged, that the purpose of the deceased in this transaction was to create a testamentary bequest in favour of his daughter.

The question being, Whether a deed of that nature could be so executed? it was *contended* in behalf of the pursuer, That since the statute of 1772, shortening the endurance of these documents, there was not such danger to be apprehended from extending their use as in former times ; 2d December 1782, Adam *contra* Johnstone, No 18. p. 1416. *voce* BILL OF EXCHANGE.

THE LORDS, however, found, ' That the bill in question was a *donatio mortis causa*, and that a donation constituted in the form of a bill is not a valid deed by the law of Scotland.'

Lord Ordinary, Hailes.

Act. Durham.

Alt. Nairn.

Clerk, Colquhoun.

G.

Fol. Dic. v. 3. p. 375. Fac. Col. No 254 p. 309.

No 45.
Found in conformity with
Wright
against
Wright,
No 36.
p. 8088.