No. 30.

not be meant to be excluded. Though secured by real diligence, they must still be held as debts, and are still comprehended under that general term. It was so found in Robertson. Besides, here there is an actual specification of this very debt—" The legacies to Helen and Rachel Macfarlanes shall not be paid, until my executors shall have recovered as much of the annuities or other debts due by the said William Macfarlane to me as will satisfy the same." Now, Mrs. Garthshore knew they were owing no other debts to her besides the annuity, except this bond, followed by adjudication; so that the one expression is precisely tantamount to the other.

The Court doubted the intention of disponing this bond; but were satisfied that the proper terms of conveyance of heritage were not used, besides that the words " goods, gear, debts, and sums of money," were not sufficiently descriptive of an adjudication; Ross against Ross, 2d March, 1770, No. 15. p. 5019.

The petition, accordingly, (12th January, 1802), was refused, without answers. Another reclaiming petition was refused, 4th February, 1802.

Lord Ordinary, *Ankerville*. For the Petitioner, *Stuart*. Agent, *Ja. Balfour, W. S.* Clerk, *Colquhoun*.

Fac. Coll. No. 13. *p.* 27.

1802. *January* 12. CRICHTON, Petitioner.

No. 31.
A testamentary deed being improbative, not sustained as a conveyance of moveables.

Walter Macturk bequeathed to his niece, Mary Crichton, the contents of a bill of exchange, and some other articles, in a testamentary deed, subscribed by him in presence of two witnesses, whose subscriptions are adhibited to the deed, which, however, is not holograph, and which contains neither the name of the writer nor the designation of the witnesses. His brother Robert was decerned executor, and took possession of his whole effects.

Against him the legatee brought an action, claiming the articles bequeathed to her,

Pleading: That both in the acts 1593, C. 175, and 1681, C. 5. on which the defence of the improbative nature of the writing rests, the writings specially mentioned are deeds *inter vivos*, and deeds conveying heritable property. Testamentary conveyances can be affected only by the general words, " other writs," following the special enumeration; but, in all such cases, the general words never comprehend things totally different, but those only of the same class and description. Testamentary deeds, destitute of the solemnities requisite to the authenticity of contracts and obligations, are sustained by the English law, if there exist sufficicient proof of intention; Bacon Abridg. by Gwillim, vol. 7. p. 328.; and by the civil law, Lex 4. Cod. Lib. 4. Tit. 13. In contracts, the want of the statutory solemnities cannot be supplied by the granter's acknowledgment; Crichton against Syme, 21st July, 1772, *voce* WRIT; Macfarlane against Grieve, 22d May, 1790, No. 51. p. 8459.; as it is in this last case expressed, " that these are required

No. 31.

to afford time for due reflection and deliberation." Now, testaments are the effects of mature and deliberate consideration; and our law agrees with the law of other countries in giving an indulgence to such witings in the omission of the statutory solemnities; Ersk. B. 3. Tit. 2. § 23.; Norval *contra* Ramsay, No. 46. p. 12290.; Drummond *contra* Brown, 1798, (Not reported; see APPENDIX.) See WRIT, (privileged.)

Observed on the Bench: An improbative writing has never been sustained as a conveyance of moveable succession, unless where there has been a *penuria peritorum*, as in the case of military testaments made abroad.

The Lord Ordinary (19th November, 1801,) assoilzied the defender; and the Court "adhered," by refusing a petition, without answers."

Lord Ordinary, *Methven*. For the Petitioner, *Corbet*. Agent, *A. Douglas*.
Clerk, *Pringle*.

F. *Fac. Coll. No. 14. p. 29.*

1803. *January* 18. HENDERSON *against* WILSON and MELVILLES.

No. 32.
A will disposing of the personal estate sustained, although containing a reference to the destination of heirs, called by a deed conveying the testator's heritage, which, owing to defects in point of form, was found insufficient for that purpose.

In the competition which arose upon the death of Walter Bowman of Logie, relative to his succession, No. 49. p. 15444. the parties then appearing were Robert Henderson, the substitute under the procuratory 1763; George Melville, the heir called by the deed 1757; and Catharine and Christian Melvilles, two of the heirs-at-law. The Court finally decided in favour of Henderson, so far as concerned the heritable property; but "found it unnecessary, *hoc statu*, to decide as to the residue of the personal estate of the said Walter Bowman."

The cause having been carried to the House of Lords by appeal, the judgment complained of was reversed, (29th March, 1802,) and the succession to the estate of Logie was found to be governed by the deed of entail executed in 1757, as the procuratory 1763 was defective in point of form.

When the petition for applying this judgment was moved, memorials were ordered (18th May 1802) with regard to the residue of the personal estate, not yet decided.

Besides the Melvilles, who were the daughters of Jean Bowman, the eldest sister of the testator, Walter Wilson, who was the son of Isobel, another daughter, also appeared, who, in conjunction with them,

Pleaded: The settlements of the heritable estate, and of the moveables on the same day, the last expressly referring to the other, must be looked upon as one complete individual settlement and expression of will, the one of which cannot subsist without the other. The moveables are conveyed to the same series of heirs upon which the landed estate is settled, and the money is to be laid out in the purchase of lands to the same order. The library also is to remain with the same series of heirs for ever.