Written testament or in a Codicil Stair lib. 3 Tit. 4 § 24 Ver as to Moveables. But not in a Nuncupative testament, or by Word of Mouth 19 January 1665 Schaw contra Lewens Stair lib. 3 Tit. 8 § 34 McKenzie Inst. lib. 3 Tit. 9 § 2. Because Nuncupative testaments depend on the Evidence of Witnesses, which the Rule of Judgement with us Limits to a hundred pound. Nor wo[uld] it be sustained to support such a Will, that the person Concern[ed] offers to prove by oath of the nearest of Kin that the deceas[ed] did before him and other Witnesses name such a one to be h[is] Executor and Universal Legatary Stuart Answers to Dirlet[on's] Doubts Tit. Testaments. An Executor is named either for [his] own Behoof, or in trust for Another. An Executor for his o[wn] Behoof is he who is also made universal Legatary, or has som[e] particular Legacy Bequeathed to him. The Interest of an Executor Named for the Behoof of others is afterward explained in th[e] proper place Vid. Infra pag. 1549 & seq. In the Customs of France, [if] a testator Institutes any other person for his executor besid[es] him who has Right to succeed by Law if there were no testame[nt] they do not Give him the Name of Executor, but only that of Universal Legatee, altho he succeeds to all the Goods and to al[l] the Rights the testator had power to Dispose of: for they give the name of heir to the heir of blood, to whom they appropriate the Goods which they do not allow the testato[r] to Dispose of, Les Loix Civiles &c. Tom. 1 part 2 Liv. 4 [Tit.] 2 pr.

Both by the Civil Law and by the Law of England, a Mans Whole estate without Distinction of heritable and Moveab[le] may be Devised and Bequeathed in his testament. Tho in Engl[and] [in a Will of Lands there is no Executor therefore they may Enter without appointment of any Person and] only such wills as concern the Disposal of goods and Chattel[s] are under the Cognizance and Direction of the Ecclesiastic[al] Laws: The Matter of the Devise of lands tenements and he[re]=ditaments with all questions incident thereto, is to be Determined by the Laws temporal, Rich. Grey System of English Ecclesiastical Law Tit. 24. But in Scotland no here[di]table or Real Right whatsoever can be Conveyed by testa[=] ment at any time 4 Decemb. 1664 Ker contra Kers. More than by Disposition or other deed on Death bed to the preju[dice] of heirs. Moveables therefore are with us the only subjec[ts] which can be passed over by testament, and the whole of th[em] are termed Executry Because they come under the Executo[rs] Management.

(1) And the will ought to be approved in Chancery; tho a will both of Lands and Goods may be proved in the Spiritual Court

Management. But all cannot be Disposed off by the testator. Certain portions thereof being exempt from Conveyance in testament; and the testator Disabled to ordain any thing that is Contrary to the Disposition and Spirit of Law l. 55 ff de Legat. 1. For

The Best of every kind of Moveables belongs to the heir of line as heirship, if the testator be one who by Law may have heirship. Nor are allways the Rest of the Moveables wholly at his Dis=posal. A Woman whether maid or Widow, may indeed intirely Dispose of all her Moveables without allowing any part to her Children; [Hope's Min. pract. Tit. of Testaments § 74.] And May, if she be Married, freely dispose of her share of her husbands Moveables, without any Claim upon the same by her husband or Children. But when a Man Makes a testament, his power is greater or lesser according to Circum=stances, at the time of his death.

If a Man be Married and have Children at his death Law provides to the wife a third of his Moveables, called jus Relictae the Interest of the Widow who is called Relicta because she is left on life behind her husband, to the Children in familia [of both Sexes whether of the same or of different marriages, but not to Grand Children Nov. 22 deputy ... 1631] another third, called their Legitim, because it is ordered and De=termined by Law, or bairns part of Gear, or portion Natural, because it flows from the Natural Obligation upon parents to provide their Children to a part of their Means: And the Re=mainder of the Moveables is all the testator can Dispose of, hence termed the deads part.

[contra Chapman Gibson]

If there be either a Wife or Children and not both, the tes=tament Receives a Bipartite Division, that is the wife or Children in being get one half of the Moveables for their Legall share; and the other is Reckoned the deads part, ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ And tho there be both a Wife and Children; Yet if she by her Contract of Marriage or other wise, is excluded from Any part of the husbands Moveables; No Division in the testament in favour or upon Account of her is to be admitted Act 19 Parl. 2 Sess. 1 Ch. 2. Thus where a Man left wife and Children behind him and the wife had Accepted a Voluntary instead of her Legal provision, his Moveables Received a Bipartite Division betwixt the Legitim and Dead's part equally as if the wife were Removed by Death 18 January 1726