before the Election, one of the things of which the Election was to be made should happen to perish without the fault either of the one or the other, the other remaining belongs to the Legatary. For altho' this Legacy was of a Right to Chuse and that now there is no Room left for choice. Yet the Intention of the Testator was that the Legatary should have one of them; and therefore he ought to have that which is the only one that Remains. Les Loix Civiles &c. ibid. Art. 10. A particular Special Legacy is a particular thing given in specie, as a certain Horse, or piece of plate &c. Or a Sum owing to the testator by such a Man or by the Legatary himself, for a Creditor may release his debt by Bill 3 Inst. de Legat. If the Testator bequeath any Specifick thing which he knows to belong to another 4 Inst. de Legat. Or an heretable sum belonging to himself, which he knew to be heretable; the Executor is bound to purchase it for the Legatary or give him the Value of it. For the Rule concerning the Legacy of a thing which belongs to another, is not so to be understood, as if the testator might in Conscience give away or ex Legatee Retain a thing bequeathed which belonged not to the testators: but the Meaning of bequeathing a thing that is another's is only, that the testator do thereby oblige his Executor, either to purchase it or pay the Value to the Legatee. So that the Authors of the Cannon Law seem not to have understood this Rule of the Civil law, when they Condemn it as Contrary to the Law of God exp. 5 X. de Testam. Unless we suppose with a Learned French Lawyer (Les Loix Civiles &c. Tom. 1 part. 2 Liv. 4 Tit. 2 Sect. 3 Art. 3) That the Canon is not to be applied to the forsaid Rule of the Civil law if it fall out but to the bad use made of it in a particular case where the Legatee being in possession of the thing bequeathed refused to give it back pretending to found his right to the thing on the Rule of the Civil law, which had permitted the testator to Bequeath it to him. Thus a special Legacy of an heretable debt which the testator was presumed to know to have been heretable, was sustained to affect the dead's part of the Moveables Per tanto 22 January 1624 Drummond contra Drummond 2 Decemb. 1674 Cranston contra Brown and the Legacy of a bond of Relief before assigned by the testator to another was ordained to be made up out of the free Gear, seeing he the Testator could not be Ignorant of his having Made such an assignation 24 June 1664 Falconer contra Dongall. A Wife having

having Bequeathed a bond which belonged to her husband jure mariti, his Executors were obliged to make it up to the Legatary, as Legatum Rei Alienæ Scienter Legatæ 16 June 1664 Murray contra Executors of Rutherfoord. But if a testator Bequeath what belongs to another Supposing it to be his own d. 3 4 Just. de Legat. Or an heretable sum belonging to himself thinking it Moveable, his Executor is not obliged to make good the Legacy; and the same being Merely gratuitous, is understood to be given by the testator only as he had it, without any Warrandice even from Eviction and deed Stair lib. 3 Tit. 8 § 41 Justin. lib. 4 Tit. 42 § 21 Justin. Stuart Answers to Dirleton doubts Tit. Disposition. The Reason of the Difference why a special Legacy of what belongs to another, or cannot be so Disposed of, is Effectual if the testator knew, and not if he was Ignorant, that the thing was another Man's, or could not be given in Legacy is: Because Law presumes, that one who bequeaths in Legacy what he thinks to be at his own free Disposal, would not have done so, had he known the Contrary. Seeing Men are generally More Inclined to bequeath their own goods, than to burden their Executors with purchasing from others in favour of Legataries; and dying persons are presumed not to Remember what they had formerly done. A Creditor may be queath to his Debtor all that he owes him, or a part of it. But this, as all other Legacies, does no prejudice to the Creditors of the testator, who are preferred to all the Legataries; and the Debtor who is a Legatee for what he owes, will not be Discharged from his Debt unless there be goods Enough in the Inheritance to satisfy all the Creditors of the testator 6 Jur. Fol. Lib. Leg. junct. 6 Dec. 1631 Faa Leg. Sale. Legacies of Alimony or of Maintenance, last during the life of the Legatary, unless the testator have limited the time. For Alimony and Maintenance last indefinitely, not being Restrained to a certain Duration of time, are for the whole time that the Legatary shall stand in Need of them, which Comprehends his whole life L. 14 ff. de Alimen. Legat. A Legacy of Alimony or Maintinance Comprehends Food, Raiment and Lodging, unless the testator shall have declared some bounds to it; for one cannot live without Cloaths and Lodging. But this Legacy doth not Comprehend that which