bequeath to his debtor the debt which he owed him, and afterward oblige the debtor to pay it, the Legacy would be Revoked, Fo. 84 & 2d Liberal. Legal. For it was not a sum to be Received, that was bequeathed, but an aquittance. 2/ 82 Specifick legacies is lost to the Legatee, when the thing perishes without the fault of the Executor & 16 Inst. 2d Loyal. Because the property thereof was transferred by the Testators death to the Legatary, and Res perit suo domino. But a General Legacy or a certain quantity of any thing, as Corn or Money Bequeathed, cannot quite perish Unless the whole [illegible] become extinct. 3/ A Legacy becomes null if the Legatary die before the Testator Liun. 828 3 C. 2d Cadue. Inst. Spotswood Prat. Fol. Legacies, allso after making of the Testament, for the Legatee himself could have no right to it till the Moment of the testators death which was to give the effect to his testament, And he not being alive at that time cannot acquire. Besides, Regard is had to the Legatees person only, and not to his heirs or Nearest of Kin. But if the testator has Conceived his Legacy in such terms as to shew his will, that in case of the Legatees Chancing to die before him, the Right should pass to the Legatees next of kin; Such a Disposition would have its effect, Ld Lois Cowles &c. Fons part 2 Lec. 34 1. Lect. 10 Art. 6. For since the will of the testator holds the place of a Law, Nothing would hinder such a disposition from having its effect. By the Civil Law, if a Legacy is Conditional and the Legatary dies before the Condition of the Legacy be fulfilled, he dies without having had any Manner of Right to the Legacy, So that he transmits no Right to his executor L. 41 L. 49 & 2d Cond. & Dem. Altho the Condition should afterward come to pass after the death of the Legatee but it is otherways as to Conditional Contracts, wherein a Creditor dying before the Condition exist, transmits to his heir Eprem obligatione Inst. L. 87 & 2d Verb. oblig. & 4 Inst. Cod. & 25 Inst. 2d Inst. Steph. The Reason why that law makes this Difference betwixt Conditions in testaments, and those of Contracts is because in testaments there is only the Testator himself who Regulates the effect of his Disposition; any

if it does not Expressly Comprehend the Executors of him in whose favour the Disposition is Made, if it is limited to his person, that is, if the right is not required to that person during his life, he can transmit nothing of it to his executor. But in Contracts there are two persons who treate both for themselves, and for their heirs, if they are not excepted. But the law of Scotland seems to make no distinction betwixt the effect of Conditions in testaments, and Conditions in Contracts, and allows No Executor of a Legatary or of a Creditor in a Contract to take advantage of a Conditional Legacy or obligation, where the Legatee or Creditor dies before the Condition is manifested. Pitcairn pag. 524. 4/ A Legacy is Ineffectual, if the testator leave more debt than goes. But in legatis tempus mora litis, non mortis testatoris spectandus. So a Woman who had Money owing to her by bonds bearing Annualrent, and was owing debts that bore No Interest, having disponed her whole Moveable estate to a certain man, with the burden of a Legacy to a friend, which legacy could Not have been claimed at the time of her death, because her debts then exceeded her effects; and by Annualrents of the Subject Disponed Arising after the Disponers death, and the Creditors not exacting payment of what is due to them, there happening to be a fund of free years out of which the legacy might be satisfyed: These growing Annualrents were brought in Computo to afford the Legacy when pursued for, January 1728 Rae contra Brown.

Legacies take in part only, when they Exceed the deads part of the free Goods in which case, they Regularly suffer a proportionable Defalcation, without Distinction, even Legacies to pious uses, as for building a Church &c. 6 Feb. 1630 Doctor Monro contra Scots Executors. Spotswood Prat. Fol. Legacies Stair lib. 3 Tit. 4 § 24 Vers. as to Moveables Tit. 8 § 39. Because how great soever the favour of Legacies for pious uses may be, yet the Law Not having excepted them from this Rule they are Necessarily subject to it as well as other Legacies that are as favourable such as Legacies to Servants, to poor Relations, or to other Indigent persons; or Legacies left in Consideration of Restitutions which the Testator thought himself bound to Make. Since it seems more just and Natural to keep to the Law, and to prefer to the Liberty of breaking in upon it, the Necessity of having fixed Rules

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