and to wait till a provision is made by some other Law in favour of Legacies & priors nisi if it is necessary. But a Legacy will suffer no Defalcation with others tho the debts part fall short if either it be left with this express quality that in such a case it should not be abated, Stair ibid. Or the testator himself executes his good Intention by giving his Charity or paying the legacy in his own lifetime, and not leaving it to be taken after his death out of an estate which will be no longer his, Stair ibid. Nor will a special Legacy be so abated in a Competition with General Legacies from the tacit and presumed will of the testator to have such a Legatee particularly gratified therewith Stair ibid. §34. Whether it be an Individual thing given in legacy as a horse, sword, Cup &c. which cannot be Directly abated, or a special sum of Money 21 July 1665. Spridl contra Miller. Because if the special Legacy should fail, or be lost by the Debtors Insolvency the Legatary would get no Reparation out of the fund of the other Legacies, and Consequently ought to suffer no Abatement with the other Legataries: According to the Rule, quem Equitas Commodum aim Iequi debet incommodum. The Rule that Special Legacies are Never affected or abated with General Legacies holds only in Legacies granted at the same time, in the same write. But an assignation on death bed which hath the effect of a Legacy, or a posterior General Legacy was found to Derogate to a prior Death bed assignation 21 July 1676 Grails contra Gordon.

Testaments and Codicils being made in a View that the person who so disposeth of his goods hath of his own death, and with a Design that they shall have no effect till after his death, the Testator is always at Liberty to Destroy and Cancel them or to revoke and alter them, by making another in die Form l. 4. ff de Bonorum Possess. secundum Tabulas. l. 2. ff de Injust. Rupto Irrit. fact. Testam. Which Annulls the former, tho the latter hath no effect, or remain without Execution, by the Executor and Legataries Renouncing the Right they have by it, or dying before the Testator §2 Inst. quib. mod. test. Infirm. The last Testament is effectual l. 1 §1 ff de Bonor. poss. secun. Tab. l. 22 ff de Legat. 3. And thence term a latter will. For being a testament Contains an Universal Disposition of the Totality of the testators goods, two Different Testaments cannot subsist together, but the second Annulls the Dispositions of the former if it does not expressly Confirm them. And altho the second make no mention of the first, Yet Never the less it Revokes it by the Bare effect of the will of the Testator, who being at liberty to Change his Testamentary Dispositions to the Moment of his Death Declares sufficiently by those which he Makes in the second testament

testament, that his will is that the first should Remain without effect. But that which is abstruse and Uncertain in the testament which subsists, may be explained by the former testament the Revoked, Les Loix Civiles &c. ibid. Sect. 6 Art. 19. If in the second testament the testator makes only some Additions, some Deductions, and some Alterations on the former, whether it be in Naming of the Executor, or in the Legacy; whatever he Conforms of the first testament, shall have its effect in Making a part of the second, Les Loix Civiles &c. Tom. 1 part 2 Liv. 3 Tit. 1 Sect. 5. Art. 2. But the latter will may commonly be Revoked or Altered. Yet if one by Contract or other deed oblige himself to Dispose of his Means so and so, or not to alter his testament, in such a case his will is Irrevocable and Unalterable Stair lib. 3 Tit. 8. § 33. An obligation to leave a Legacy, is sustained as an irrevocable Legacy out of the dead's part of the granters free gear, but not as a debt which affects the whole head of the testament, 13 January 1631 Houstoun contra Houstoun. For tho by the Roman Law, the free power of making testaments was carefully, hence defended from Encroachments, and none could Renounce hereditary Inventies without his Consent: Yet our Law allows the testamentary Liberty to be abridged, and the Right of succession to Living persons Renounced by pactions and Contracts 6 July 1630 Sticken head contra Bothwell Stair lib. 1 Tit. 10. lib. 3 Tit. 8 § 25. And some of the Doctors of the Civil law have Invented Derogatory Clauses, which testators put in their testaments when they fear left they should be obliged afterwards to make other Dispositions against their will, upon Considerations that may oblige them thereto, and are willing to Annul the said Dispositions before hand, and to make those subsist which they had made in the first testament, Les Loix Civiles &c. ibid. Sect. 5 pr. The use of which Derogatory Clauses is not Agreeable to the Spirit of the Roman law, nay it is Directly Contrary to it. For that law Does not allow men to Deprive themselves of the Liberty of Making New Dispositions, and of Changing and Revoking the first when they please l. 22 pr. ff de Legat. 3. And makes the last will Annul the former l. l. 22 pr.

In the Roman law they Distinguish three sorts of Donations Mortis Causa or in prospect of Death. The first is of those, who without any present danger of Death, one gives out of a View that he must some time or other die. The second is of those where the