

- No. 17. to serve, which Cardrona's had, and therefore preferred him; otherwise, the requiring the Bailie would have been equivalent to any infeftment, had it not been for want of that step in the progress.

Fountainhall, v. 2. p. 454.

SECT. VI.

Virtual Substitution.

- No. 18. 1722. July 13. KENNEDY *against* ARBUTHNOT.

Any declaration of a defunct's intention is sufficient to establish a substitution in a tailzie, to have, at least, the force of a *fidei commis.* so as to obligē the heirs at law to make the substitution effectual, by granting a direct conveyance.

Rem. Dec.

* * This case is No. 22. p. 1681. *voce* BLANK WRIT.

SECT. VII.

Virtual Tack.

- No. 19. 1625. July 5. LD. AYTON *against* TENANTS.

In a process of removing at the instance of a singular successor, the tenant accepted upon the former proprietor's holograph rental book, wherein he was inserted as rented during his life, and offered to prove, that, by the custom of the barony, this was understood to be equivalent to a formal rental. The defence was repelled, for though this might bind the master, it was no obligation upon the tenant to continue in his farm for life; and so, not being a real right, could not be good against singular successors.

Durie. Kerse.

* * Durie's report of this case is No. 24. p. 7191. *voce* IRVITANCY.

* * Kerse's report is No. 44. p. 15187. *voce* TACK.