1696. *July* 9. GREIG, JAMES WILLIAMSON, and DICKSON, *against* JOSEPH KNOX.

THE Lords advised the debate betwixt Greig, Mr James Williamson, and Dickson, against Joseph Knox, in Coupar. The case dipped on a very subtile question, Whether a substitute in a tailyied sum can assign the *spes successionis* before the devolution and existence of their right? It was thought, if it afterwards happened actually to exist, there was some ground to plead the validity of the prior assignation while it was but *in spe;* for, though *viventis nulla est hæreditas,* yet *pactum de hæreditate viventis valet* in our law, as one may assign his interest as a bairn of the house, though the same depends on the future event of his father's death. See *July 6th* 1630, *Aikenhead* against *Bothwell.* But here the mother, Janet Kinloch, was substitute, failing of her children by death, to succeed to such a part of their portions: *Ita est,* That did not exist in her time; but she deceased before them, and then they died; so it could never be said to be *in bonis* of the wife, nor to have fallen under her escheat; and the *L.* 42, *D. de Acquir. Rer. Domin.* says expressly, *Substitutio quæ nondum competit extra nostra bona est:* See Craig, *Feud. p.* 219 *et* 239:---And so it was urged the assignation she made to Williamson, her husband, could convey no right, seeing she deceased before the devolution of it in her person. Then it was argued, That they could only be heirs to the wife, she being a member of the tailyie, and so could not quarrel the assignation, which was her deed.

The Lords found, They were not obliged to be heirs or executors to her in that right *representativè* so as to fulfil all her deeds, but only *designativè,* as the persons who might be heirs: and so preferred Greig to Williamson, the assignee. *Vol. I. Page* 727.

1695 *and* 1696. JAMES RENTON *against* JAMES WILSON and DAVID PLENDERLEITH.

1695. *February* 1.—MERSINGTON reported James Renton against James Wilson and David Plenderleith. Edward Dodds having provided the half of his conquest, moveable or immoveable, to his wife, failing children of the marriage, she dispones her right to Wilson, her nephew, with consent of her husband; and this being questioned by Renton, nearest heir to Edward, as not subscribed by her, but only by two notaries, whereas she could subscribe herself, and that such deeds are declared null unless it express the impediment which disabled them to write at the time; as was found, *12th July* 1626, *Wallace;* and *24th June* 1630, *Fairholm; 2do.* The style of moveables and immoveables could not comprehend lands:——The Lords thought it would in this case, because, by a posterior writ, the husband had explained it. *3tio.* That the wife was the principal disponee, and the husband, only consenter, could not transmit the fee. But Craig asserts it will. *4to.* That Wilson, coming in like an heir of provision to the half of the land, he must also be burdened with the half of the