No 10.
The heir of a minor found to inherit his privilege of revocation.

1698. *December* 15. STRAITON *against* WIGHT.

DAVID WIGHT, Merchant in Ayr, being in terms of marriage with Margaret Straiton, and taking sickness, he grants her a bond for 1000 merks, and dies. She pursues Andrew Wight, his brother, and heir. He raises a reduction, on these reasons, 1*mo*, The bond is null, not designing the place where subscribed. *Answered*, This is but an omission of the writer, and offers to prove by the witnesses it was signed at Ayr; and, though the 5th act of Parliament 1681 will not make the nullity of the want of witnesses' designations suppliable by a condescendence, yet that extends not to the writer's name, statutes being *stricti juris*, and not to be drawn *de casu in casum*. The *second* reason was, minority; and I, his heir, have revoked it; and you must prove an onerous cause, or that it was *in rem minoris versum*. *Answered*, 1*mo*, The minor's heir has not the privilege of revocation, which is only personal to himself; 2*do*, He could have legated as much by testament, though minor, (seeing his moveables will exceed L. 200 Sterling) *ergo* he might grant a bond, especially where it bears a clause dispensing with the not-delivery, and so makes it of the nature of a *donatio mortis causa*. THE LORDS found the heir might revoke as well as the minor; and this bond bearing to be resting owing, without any other cause, instructed the lesion, and that *non fecerat id quod potuit*, by making a testament, but had done *quod non potuit*, in giving a bond; and found they could not transubstantiate it to a legacy; and therefore reduced the bond. See QUOD POTUIT NON FECIT.

Fol. Dic. v. 2. *p.* 73. *Fountainhall, v.* 2. *p.* 25.

No 11.

1700. *January* 4. DICK of Grange *against* His AUNTS.

THE cause, mentioned 16th February 1698, *voce* SUCCESSION, Dick of Grange against his Aunts, was this day determined. And the LORDS, by plurality, found, seeing the late Grange was interpelled by the executors, and required by way of instrument to concur with them in confirming the testament, and he refusing during his lifetime, and contending to have the sums heritable, and so to be as his heir; his son cannot now recur and offer collation with the executors, seeing the *jus conferendi* then offered to him was rejected and repudiated by him, and so being extinct, did not transmit to his heir.

Fol. Dic. v. 2. *p.* 72. *Fountainhall, v.* 2. *p.* 78.