1727. *July.* COMPETITION CREDITORS of JOHNSTON of Graitney.

No. 17.

William Johnston of Graitney disponed his estate "in favours of William Johnston his eldest son in liferent, and for his liferent use allenarly, and to the heirs-male to be procreated of his body in fee, which failing, to James Johnston his second son, and the heirs-male of his body in fee, reserving the disponer's liferent." Upon this disposition, containing procuratory and precept, sasine was taken to William Johnston, the eldest son in liferent, and to the heirs-male to be procreated of his body in fee, which failing, to James Johnston the second son. There never having existed heirs-male of William Johnston's body, the question arose, Whether this was a valid infeftment in James Johnston's person, or, if it was null, and he obliged yet to connect his title by a service. It was argued, That James Johnston, being no more but an heir-substitute by his father's disposition, the infeftment taken in his name was void and null, and he could no otherwise establish a title, either to the disposition or precept, than by a service as heir. It was allowed on the other side, That in case there had existed heirs-male of William Johnston's body, James Johnston could come in no other way than as a substitute, in which event his infeftment must have vanished; but it was contended, since he was also called upon in the event that these heirs-male should never exist, in that case it could not be as a substitute, but as an institute. The Lords found the infeftment null. See APPENDIX.

Fol. Dic. v. 2. p. 396.

1740. *June 12. and November.*

CAMPBELL *against* MARGARET CAMPBELL and ALEXANDER M'MILLAN.

No. 18.
Substitution in a legacy.

Daniel Campbell, second son to John Campbell, late Provost of Edinburgh, executed a testament, whereby he bequeathed all his goods, money, and effects whatsoever, to his father John Campbell, and in case of his decease, to his sister Margaret.

After the death of John Campbell, the father and institute, who survived the testator, a question arose between Captain William Campbell, eldest son to the said John, and his sister, in which the Captain alleged, that substitutions in testaments and legacies are understood to be vulgar substitutions, *si hæres non erit;* and as upon the death of the testator the legacy is *eo ipso*, without any formality of acceptance, vested in the institute, so after the institute's death, it transmits to his nearest in kin. The sister, on the other hand, alleged, that the vulgar substitutions of the Roman law, which were founded on this subtilty, that though a man could name an heir to himself, and substitute as many as he pleased, yet he could not name an heir to his heir, are unknown in the law of Scotland, by which it is no less lawful for one to substitute to his heir than to name an heir to himself;