1739. *June* 26. JEAN CRAICK *against* ANNE NAPIER.

[*Vide* Kilk., No. 2, *Minor;* C. Home, No. 121; Elch., No. 7, *Executor*, and No. 7, *Minor.*]

THE Lords found, 1*mo*, That, in respect the substitution left the free disposal of the subject to the daughter, and only took place in case she died without disposing of it, therefore the father had full power to make such a substitution. 2*do*, That the assignation or translation to Anne Napier, though made by a minor to her curatrix, was valid; either because it was revocable at pleasure, and therefore more of a testamentary nature, than of a deed *inter vivos;* or because, in this case, Anne Napier seemed rather to be named curatrix *ad certum effectum* than *ad omnia*. Arniston even denied that the maxim, *Tutor non potest esse auctor in rem suam*, obtained in this case more than it did betwixt man and wife. 3*tio*, As to the testament, the Lords found that it was likewise a valid conveyance of the subject in question; and repelled the allegeance, that the bond was made heritable by the substitution, and so could not be transmitted by testament, or that, supposing it was testable, it could not be conveyed by these general words, executor and universal legatar, which can give no more than what would have gone to the executor dative if there had been no testament.

1739. *July* 6. SHEIL *against* CROSBIE.

[Elch., No. 8, *Writ;* Kilk. No. 4, *ibid.*; C. Home, No. 124.]

THERE were two questions here; 1*st*, Whether a bond signed only by one notary subscribing for the party and two witnesses, was supplyable by the party's oath, That he had given orders to the notary to subscribe for him? Some of the Lords thought that such an obligation was null *ipso jure*, and so not supplyable by oath of party; in the same manner as if it had wanted the subscription of the party required, by Ja. V., Parl. 7, Act 17, or the subscription and designation of the witnesses requisite by Act 1681; in both which cases, it was allowed that it would not be supplyable by oath. But the President, Arniston, and the majority, were of opinion that it was supplyable by the oath of the party; for they observed, that there was this difference betwixt the Act 1681 and the Act Ja. VI., Parl. 6, Act 80, by which the subscription of two notaries is introduced, that, by the first, the deed was declared null, if it wanted the solemnities there required; but, by the other, the deed was not said to be null, but only *to make na faith*. The requisites mentioned in Act 1681 were solemnities, which, if wanting, could not be supplied; but the subscription of two notaries was only *ad majorem securitatem*, because the law would not trust one, for fear of falsification; which fear is entirely removed if the party depones that he gave orders to subscribe for him. And, lastly, The constant practice