that substitution was not altered by the general disposition by Provost Campbell five years before the testament. Arniston also differed; yet 11th November they adhered. *Vide* 13th July 1681, Christie, (DICT. No. 30. p. 8197.)

No. 8. 1741, Feb. 17. HAY *against* CUTHBERT of Castlehill.

FIND the heir not *passive* liable, (for they thought it indeed only a legacy,) but found that the defender, the heir, having taken up the subjects in the second deed 1732, he must account for and apply the surplus of the subjects, if any be, after paying debts, for payment of the children's provisions.

No. 9. 1741, June 4. PATERSON AND MILLER *against* PATERSON.

A MAN by a testamentary deed having made a trust-deed for the use of certain legatees, and obliged the trustees to pay to the legatees after-mentioned, their heirs executors and assignees, the sums of money after specified, and then names the legatees and sums, and among the rest Charles Paterson 1000 merks without adding the heirs executors or assignees to any of them; this Charles died before the testator, and the Lords found that the legacy fell by his death by a majority; 2dly, they found no place for *jus accrescendi;* 3dly, that the wife's share of the household plenishing, so far as they were extent at the husband's death must abate from the legacy of household plenishing.

No. 10. 1742, Feb. 12. PRESBYTERY OF KIRKCUDBRIGHT *against* BLAIR.

THOUGH a special legacy or an assignation of sums of money, that is revokable, is effectually revoked by uplifting the money assigned, yet a design to uplift it though ever so clear by giving orders to a writer to intimate to the debtor to pay and apply the money when paid to certain other uses, and lodging the bonds in his hands, the party dying before the money is paid, or any express revocation in writing, the special assignation subsists, 18th December 1740.—27th November 1741, Before answer grant diligence as prayed for, *renit.* President, Justice-Clerk, *et me.*

This case is stated before, 18th December 1740, and we had two questions, 1st, Whether the calling for the money from the debtors is itself a revocation? and 2dly, If it is, whether we could allow the pursuer to prove by witnesses that he did it not *animo* to revoke the mortification? 1st, We found the witnesses could not be admitted; 2dly, We altered the former interlocutor, and found sufficient evidence to operate a revocation of the mortification.—N. B. This very morning in the case of Hugh Ross of Holm against his father's widow, a bond taken by the father to his wife in liferent which was revokable, and the father having charged with horning actually got payment of a part, we unanimously found that this was no revocation in so far as the money was not uplifted. I did not hear how they all voted, but the President and I differed as to this last from the interlocutor.—12th February 1742.

No. 11. 1742, July 27. LAUDER of Winepark *against* JACK.

A BILL of L.40 sterling being legated, the testator thereafter obtained payment, but some days thereafter, as was said, put the money in his landlady's hands to be applied as