

tenements which fell to the pursuer as heir, by uplifting other moveables or heritable sums, since it was *in rem versum hæredis*.

No. 2.

*Newbyth MS. p. 42.*

1675. July 23. LAMINGTON *against* MUIR.

No. 3.

AN heritable bond being payable to a father, and, after his decease, to his two sons *nominatim*, all three were infeft *unico contextu*, the precept of sasine being in the same terms. Though the sons were only here substitutes, yet the Lords thought that their infeftment supplied the necessity of a service.

*Fol. Dic. v. 2. p. 367. Stair.*

\* \* This case is No. 45. p. 4252. *voce* FIAR.

1680. February 4. ROBERTSON *against* PRESTON.

No. 4.

MARY ROBERTSON pursues the representatives of my Lord Preston, for payment of a bond due by him to her. They alleged no process, because the bond being conceived payable by the pursuer's father, and failing of him by decease to her, the father was fiar, and she was but heir-substitute; and he having survived the term of payment, the sum was *in bonis defuncti*, and so must be confirmed. It was answered, That bonds of this tenor are always effectual without confirmation, being much more than a conditional assignation, to take effect at the cedent's death; for by the very tenor of the bond, it is intimated and notour to the debtor.

Persons *nominatim* substituted in bonds, need no service nor confirmation.

The Lords found no necessity of confirmation.

*Fol. Dic. v. 2. p. 367. Stair, v. 2. p. 751.*

\* \* See Thomson *against* Merkland, No. 11. p. 5774. *voce* HUSBAND and WIFE.

1708. February 12. KER *against* HOWISON.

No. 5.

MR. RICHARD HOWISON, minister at Musselburgh, having bought some acres near the windmill of Edinburgh, he takes the rights to his wife and himself in life-rent, and to William, his eldest son, and his heirs, which failing to Richard his second son, and his heirs, and they also failing, to his own heirs and assignees; and the sasine bears not only himself and William his eldest son, but also Richard his second son, to be *nominatim et per expressum* infeft. William, the eldest son, going a voyage to the Indies, dies there; whereon Richard the second son serves himself heir in general to William, and disposes these acres to Jean

An eldest brother being fiar, and the second only substitute, it was found, that the latter, without being served heir in special, could not dispo-