

SUBSTITUTE AND CONDITIONAL INSTITUTE.

1609. *July 20.* *COUSLAND against LAING.*

IN an action pursued for a debt of 100 merks, against one Laing, at the instance of Cousland, executrix to umquhile Christian Cousland, the Lords found, That an obligation, purporting payment to be made to the first person therein nominated, and failing of him by decease, to the second person, if the first person survive till the day of payment be past, and decease thereafter, the sum contained in the bond will not pertain to the second person nominated in it.

No. 1.

Fol. Dic. v. 2. p. 395. Haddington MS. No. 1624.

1623. *February 22.* *LEITCH against L. BALNAMOON.*

In an action betwixt Mr. John Leitch and the Laird of Balnamoon, the Lords found, That obligations, wherein the payment is appointed to be made to a second person therein named substitute, in case of decease of the first person, where the first person lives after the term of payment appointed by the bond, pertains to the said first person, notwithstanding of the substitution, and that the same comes under his testament, and pertains to his executors, and that the second person hath no right thereto by virtue of that clause of substitution, albeit the first person should never alter that clause of the bond in his life-time.

No. 2.
Found in conformity with
the above.

Act. Hope et Stuart.

Alt. Nicolson et Nairn.

Clerk, Gibson.

Fol. Dic. v. 2. p. 395. Durie, p. 49.

* * Haddington reports this case :

Mr. Andrew Leitch lent 2000 merks, for himself and in name of John Leitch, his son, to the Laird of Balnamoon, to be paid to himself, and failing of him by decease, to the said John. Question arose betwixt Balnamoon, assignee to Mr. Andrew Leitch's executor, and to one of his daughters, to whom the sum was left in legacy. The chief part of a contentious disputation being, whether, by Mr. Andrew's decease, the sum fell in his testament to his executors or legatar,