1671. *November* 18.

THE Lords found an assignation to an heritable bond, or a legacy left out of an heritable sum, though they will not militate against the heir, but are reduceable at his instance; yet that the executor was convenable on the clause of warrandice, and that such rights are valid to affect the moveable estate, and so the executors are liable therein; though it was alleged that disposition of heritage on dead-bed, is a deed simply null of the law: *quoad falsum est;* for it is only null *quoad* the heir.

NOTA,—That *insanitas mentis* is not the great adequate reason inhibiting deeds *in lecto,* (though it be commonly given for it,) else such deeds should be absolutely null, both *quoad* heir and executor, and should not stand valid against the executor. *Vide omnino* Durie, 22*d January*, 1624, *Drummond* and *Drummond*, with the laws and authors there cited; *infra, June*, 1676, *Mitchell* and *Littlejohn*, *No.* 478. *Advocates' MS. No.* 260, *folio* 114.

1671. *November* 18. Anent CURATORS.

[*See the Case here referred to, supra, No.* 40, *page* 476.]

IN the action before mentioned betwixt Eleis of Southside, and Carse, *supra*, at No. 30, they found, though the office of curatory expired by the minor's arriving at his perfect age of twenty-one, and that they were not liable to count for any of his rents, except what they actually intromitted with after his majority; yet if there be one curator nominated by the rest, and sole intromitter, if he intromit with any part of the minor's rents after his majority, *eo ipso*, he shall be liable for all that year whereof he uplifted a part, though the same be small, because he should have continued his intromission; though it might very well have been objected, that if the tenants had not made voluntary payment of their farms to him, he had no right of exaction; he could not legally compel them, seeing his right was expired. But I think, if such a curator could say, that the tenants refused to answer him, it would deserve its own consideration.

Advocates' MS. No. 261, *folio* 114.

1671. *November* 18.

THE Lords found a clause in a contract of marriage, that such a woman shall be a bairn of the house, notwithstanding her tocher, obligatory; so that the wife may not, in prejudice of her husband, dispose upon it in testament to her own children, nor discharge it. *Vide* Dury, 6 *July*, 1630, *Aikenhead* against *Bothwell. Vide* Hope, *tit. De successionibus, in practicis observationibus patris, folio* 108, *ubi contrarium;* as also *Lex* 15. *C. de Pactis* seems contrary. Dury, 15th *July*, 1636, *Drummond.* *Advocates' MS. No.* 262, *folio* 114.