No. 4. 1685. *November* 24. LORD YESTER *against* The DUKE of LAUDERDALE.

The Lord Yester adjudging the umquhile Duke of Lauderdale's estate, on this Earl of Lauderdale's renunciation to be heir, for the £.7000 Sterling of tocher yet remaining unpaid; it was alleged, it cannot be summarily called amongst the acts. This being reported by Pitmedden, the Lords found it ought to be seen *in communi forma*, though it was on a renunciation; because, 1*mo*, It was the first adjudication, and so there was no hazard of Yester's being prevented, 2*do*, The apparent heir, though renouncing, had interest to see there were no other lands foisted into it.

Fol. Dic. v. 2. *p.* 405. *Fountainhall, v.* 1. *p.* 377.

No. 5. Where the creditor was dead, but had granted a special assignation, registration in name of the assignee found competent.

1692. *December* 22. JOHN REID *against* MR. JAMES DAES, Advocate.

Mr. James Daes alleged he was not *in tuto* to pay, because the bond was registrated after the creditor's death, and so was but a copy, and at most only the ground of an action, but not of a summary charge of horning; for as a bond registrated after the debtor's death, makes the registration null, because his mandate died with himself, so neither can it registrate after the creditor's death, for that is a decreet at a dead man's instance. The Lords repelled this, in respect of this answer, that the creditor had assigned it to John Reid, his grandchild, with the reservation of his own life-rent, and being a special assignation, it needed neither intimation, nor confirmation, by the act of Parliament 1690; and the registration and horning being in the assignee's name, was valid and formal, especially seeing Polwart and Coldinknows, the debtors, had homologated and acknowleged the assignation by paying the annual-rent to this assignee after the cedent's death. The Lords also repelled the other reason of suspension, viz. that by the assignation it was not to be uplifted without the consent of three or four friends named, who did not concur, because they had renounced the office, and thereupon the child's mother had procured the gift of tutory.

1693. *January* 12.—John Reid and Janet Penman, his mother and tutrix, against the Lord Polwart, and Mr. James Deas, advocate, mentioned 22d December, 1692. The Lords found the assignation was not *donatio mortis causa*, and was three or four years before George Reid, the goodsir's death, and that the tutrix might uplift, seeing two of the overseers were dead, and the other two renounced by a writ under their hands; and that, though the debtor might refuse to pay where there was not an inventory of the minor's estate made, yet here they allowed it to be given in *cum processu*, though the President thought that clause was only to remove the tutor as suspected, but not to hinder the pupil, with a curator assigned to him, *ad hanc litem*, to uplift without any inventory. But the Lords inclined to have an inventory made, else by a curator *ad litem* the said useful act of Parliament 1672, introduced in favour of minors, might be totally frustrated and evacuated. *Fountainhall, v.* 1. *p.* 536. *and* 545.

See APPENDIX.