

Nisbet ;—and the Lords adhered by a great majority to the Ordinary's interlocutor, repelling the passive title.

No. 6. 1741, Feb. Dec. 11. M'KENZIE *against* BUCHANAN.

WE were unanimous that there was no *gestio pro hærede* at common law ; and further found that Sandside having an adjudication in 1681, and purchased further rights in 1698 and 1699, and possessed upon these rights, that although his eldest son was then apparent-heir of William Buchanan of Sound, and supposing that this defender were now apparent-heir of them also, yet that the defender is not in the case of the act 1695.

No. 7. 1742, Feb. 20. GORDON of Pitlurg *against* GORDON of Techmurie.

ONE being infest in an annualrent to him and the heirs of his body, and his assignees, whom failing to his brother, the President was of opinion, that both brothers being infest in the annualrent, (though in reality the infestment was for two annualrents, one to each brother, by the division therein mentioned) the eldest brother dying without children, the other brother needed no service, and therefore might gratuitously discharge ; but if a service was necessary, he agreed with the interlocutor, that the discharge was void notwithstanding the act 1695. But upon the question, the Lords adhered to my interlocutor, finding a service necessary, and therefore the discharge void ; and refused the bill without answers.

No. 8. 1747, Nov. 25. ELIAS CATHCART *against* HENDERSON.

A FACTOR *loco tutoris* being appointed to an infant, he intromitted with the pupil's effects, which were all moveable ; and a creditor sued the pupil and him for his debt, and recovered decret, which they suspended ; and Drummore suspended the letters, in respect they had not proved any passive titles. They reclaimed ; and Arniston thought the creditor should confirm, notwithstanding the factor had intromitted, and the subject was no more extant. Kilkerran and I thought, that the factor, as any other intromitter, was liable, and might be sued ; and though our factory might defend against an universal passive title, yet that he is liable *in valorum* without any confirmation. However it carried to adhere, since the charger had not confirmed.

No. 9. 1749, Feb. 2. FERGUSON *against* THE OFFICERS OF STATE.

See Note of No. 1, *voce* ULTIMUS HÆRES.

No. 10. 1752, Feb. 26. LADY JANE SCOTT *against* THE DUKE OF BUCCLEUGH.

IN consequence of the family settlement between the late Duke of Buccleuch and the Earl of Dalkeith, his eldest son, the Earl in August 1748 gave Lady Jane a bond bearing love and favour, obliging him and his heirs and successors in an heritable bond of £20,000 on the estate of Eastpark or Smeaton, (that had been granted by the old