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 infeft 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 infeft in the annualrent, (though in reality the infeftment 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 decreet, 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 L20,000 on the estate of Eastpark or Smeaton, (that had been granted by the old

Dutchess to Lord Charles Scott, his brother, and heirs of his body, whom failing to the Earl, and which had then devolved to him) to pay to Lady Jane L.15,000, with interest and penalty "to the end and in order that Lady Jane may upon these presents charge me to enter heir to Lord Charles," (these are the words) "and that she may thereupon obtain adjudication of the said bond of provision of L,20,000 in payment of the said principal sum of L.15,000 annualrent and penalty, provided that no diligence shall be competent upon these presents against the person, or other estate real or personal of me the said Francis Earl of Dalkeith, except the said provision of L.20,000;" and lastly, the said Lady Jane, by acceptation hereof, renounces all claim of legitim or executry, or others she may have through the death of the Duke of Buccleuch, her father. The Earl of Dalkeith, it appears, did not intend to serve her in the L.20,000 heritable bond, and he died before adjudication was obtained by Lady Jane, and did not even survive Lord Charles three years. But the family estate had been conveyed to him by the Duke his father, and almost all his personal estate, so that his son, the present Duke, was obliged to serve heir to him, and succeeded to him in all his other estates; and by his death, the succession of the 20,000 heritable bond also devolved to him, thought it cannot be properly said that he succeeded to his father in it. Lady Jane brought a process against him on the L.15,000 bond, wherein the difficulty was, the obligation to pay was limited to the heirs succeeding to the Earl in the L.20,000 bond, wherein he could have no heir, since he made no title to it; that it was granted only in order to adjudge from him as charged to enter heir to Lord Charles, which is now impossible; and that it was limited not to affect his person, or other estates. The case was reported by Lord Minto; and the Lords thought, that though adjudging from the granter was the method then in view, yet it was not the only end, otherwise there would have been no use for binding heirs; that binding his heirs in the heritable bond must imply either an obligation on him to make up a title to it, so as he might have heirs in it, or otherwise, that such of his heirs as should succeed to it should perform that bond, though he should not make a title to it. Therefore the Lords, in respect that the succession to the heritable bond of L.20,000 has now by the death of the Earl of Dalkeith devolved to the defender his eldest son and heir, and that the defender is heir served and retoured to the Earl, and has succeeded to him in all his other estates, found the defender liable to perform and make good the said bond for L.15,000, and interest thereof, so as effectually to give the pursuer security in the said heritable bond of L.20,000, and infeftment following thereon, for security and payment to her of the said sum of L.15,000, and interest thereof, and penalty if incurrred; but not to affect the defender's person, nor his estates real or personal, other than the said heritable bond of L.20,000, and lands therein contained.

No. 11. 1752, July 24. JANET LUNDIE *against* MRS WILSON.

ROBERT LUNDIE of that Ilk became debtor in 1707 in a bond of 400 merks, and died in 1716, without making up titles to his estate, as heir to his mother Sophia; but was infeft in it as heir to his elder brother James, who it seems had been advised that the right of fee was not in his mother, but in the Earl of Melfort, his father, and therefore in 1696 got a gift of his forfeiture, and was infeft under the Great Seal. But after