

chusing curators. Answered: The nomination of a *sine qua non* does not determine or void the nomination; 2dly, that a nomination being once made *in liege poustie*, the father might effectually vary or qualify that nomination on death-bed. This last we did not much regard; and upon answers to the defenders' petition, we repelled both, and adhered to Minto's interlocutor; though several said they were chiefly moved by other matters in the answers, that the defenders had not taken any concern in the minor's affairs while pupil; but I confess I made no doubt that the first nomination was fallen.

ULTIMUS HÆRES.

No. 1. 1749, Feb. 2. FERGUSON *against* THE OFFICERS OF STATE.

A MAN, Ferguson, pursued the Crown and Officers of State to cognosce certain debts due to him by a defunct, to whom the Crown is left heir; and as to many particulars of horses, cows, &c. proved a sale, and we gave decret; but as to others, he proved his own pointing the goods from some of his tenants, and their being delivered to the defender, but did not prove whether in sale, or whether for ready money, or in trust, or in payment of debt; and therefore we found that part of the libel not proven, agreeably to Stair's opinion, (B. 4. T. 30. § 9.) and the decision Scot of Gorrinberry, (Dict. No. 624. p. 12,727.)

No. 2. 1753, July 1. MR JOHN GOLDIE *against* MURRAY'S TRUSTEES.

See Note of No. 25, *voce* PROCESS.

USURY.

No. 1. 1741, July 15. HAMILTON *against* CAPTAIN CLELAND.

A creditor in 300 merks granting a discharge, as dated in January 1734, bearing receipt of full payment of the annualrent till Lammas 1734; and after his death his heir suing for payment,—the defence was an allegiance of usury proved by that receipt. Answered: That the date must have been a mistake instead of 1735, which mistake is common in writs granted in the first month of a year; 2dly, *de minimis non curat prætor*, and the usury in this case could not exceed three-halfpence. At advising, we doubted whether by our Scots acts of 15 and 23 Parl. James VI. this was proponable against the heir after the usurer's death; and two judgments in 1706* and 1709, † were observed,

* Dict. No. 62. p. 524.

† Dict. No. 65. p. 16,420.