

SERVICE AND CONFIRMATION.

SECT. I.

In what Cases is a Service requisite to a NOMINATIM Substitute.—
Substitution in Moveables.—Subjects whether to be taken up by
Service or Confirmation?

1627. January 10. LAIRD of WAUCHTON against HAMILTON.

No. 1.

SIR ALEXANDER HAMILTON of Innerweik, having borrowed from John Fairly 4000 merks, to be paid at Whitsunday 1606 to himself, or he being dead, to his son William, the Laird of Wauchton, one of his cautioners, having paid the sum after John's death, took assignation from William to the bond in his brother's name, who afterwards pursued Sir Alexander for his relief. It was alleged, *first*, That it pertained not to William, unless he had been confirmed executor to his father, the sum being moveable, and so of necessity falling under testament; for albeit William was substitute in the bond, yet it ceased not to remain *in bonis paternis* till his death, and so fell under executry, he having verified himself executor to his father. It was alleged *next*, that an executor could not make assignation of any sums before he had received sentence, (which is kept before the commissaries.)

“The Lords found it was not a naked assignation, but in a manner a discharge, which they thought he might well give *ante sententiam*; *hoc attento maxime*, that he was the person unto whom the money was destined to be paid in the bond.”

Fol. Dic. v. 2. p. 367. Spottiswood, (EXECUTOR) p. 112.

1665. December 5. HELEN HILL against MAXWELLS.

In an account and reckoning between Helen Hill, relict of John Maxwell in Glasgow, who was one of the tutors named by John to his bairns, and Mr. Robert

No. 2.

A clause of substitution in a legacy, providing the