makes the first clause of the act 1695 of little effect; but there were against it Newhall, Justice-Clerk, Haining, Dun.

*** The Lords refused as to the son being liable *in valorum*, but gave the Lady another aliment of L.50 sterling. The answers were in the wrong with respect to the terms of the fund of the aliment.

No. 3. 1736, Feb. 24. JOHNSTONS *against* STEEL of Bowerhouses.

ON the interpretation of the word "possession" in the act 1695, anent fraud of apparent-heirs, the subject being an improper wadset with a back-tack, Lord Haining, Ordinary, having found that the reverser's possession was the possession of the wadsetter's apparent-heir, and that the liferenter's possession was also the apparent-heir's possession,—the Lords altered the interlocutor, and found the heir's possession of the back-tack duty relevant to subject the next heirs to his onerous debts and deeds, and found the liferenter's possession not relevant. They waved determining, Whether the assignee of the apparent-heir's possession was relevant.—18th December, 1733.

The Lords found possession of the back-tack relevant; 2dly, As to the 400 merks, remitted to the Ordinary. 3dly, Repelled. 4thly, Found possession must be proved. 5thly, Found the userenter's possession not sufficient.—23d January 1734.

The Lords found sufficient evidence of George Johnston's possession. We thought, both that there was no need *post tantum temporis* to prove the nomination, and though there had been no nomination, yet possession being *facti*, they thought a protutor's possession sufficient.—24th February 1736.

*** The case Boyle against M'Aul, 26th June 1745, here referred to, is thus mentioned:

The Lords gave the like interlocutor, as 23d January 1734 and 24th February 1736, Johnston against Steel, and refused a reclaiming bill against Arniston's interlocutor, and adhered unanimously.

No. 4. 1736, June 16. M'BRAIR of Netherwood *against* MAITLANDS.

THE Lords adhered to the Ordinary's interlocutor, finding the daughters not liable, in respect they got not payment out of their father's estate, 19th February 1736.—16th June, Adhered unanimously, except Drummore and the President.

No. 5. 1741, Dec. 9. LEITH *against* LORD BANFF.

HERE the question again occurred on the act 1695, Whether an apparent-heir not serving heir to a remote predecessor, passing by an immediate one, but possessing without making up any title, falls under that act, and is liable for the former apparent-heir's debts, who had been three years in possession, a point that had been determined upon a hearing, 8th January and 12th February 1736, Lady Ratter against her son; and Mr Craigie mentioned another, decided the same way in 1725 or 1726, Backie against

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