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 decreet; but as to others, he proved his own poinding 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 allegeance 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.

where the Court found the objection cut off by an indemnity, which it could not, if it annulled the debt; and Arniston seemed inclined to be of that opinion; though now since the act 12th *Annæ*, where the usury is committed in the original contract, it voids the contract; yet usury committed afterwards does not annul the bond; and Earl Ilay observed, that we had all overlooked that the discharge does not specify the particular sum received, and if the interest of the interest was discounted, there was no usury. We found no sufficient evidence of usury.

No. 2. 1742, Jan. 5. BLAIR *against* BLAIRS.

THE Lord Kilkerran, Ordinary, found that taking an heritable bond in 1709, and infeftment of annualrent thereon for an annualrent, at the rate of 6 *per cent.* was not usury, because the statutory interest then was 6 *per cent.*; only the debtor was allowed retention of a half *per cent.* 2dly, That the creditor's exacting 6 *per cent.* downwards to 1722, though it was usury, yet he being dead, the penal consequences ceased, and his heir was only bound to discount the sums overpaid; and this day we adhered, and refused a reclaiming bill without answers.

VIRTUAL.

No. 1. 1736, Feb. 14. ANN JOHNSTON *against* JAMES AFFLECK.

THE Lords adhered, and found that a general discharge did not include the debt formerly assigned, though the assignation was not intimated.

No. 2. 1749, Jan. 17. PRENTICES *against* CATHERINE MALCOLM.

FIND that the heirs of Jean Prentice have no election, nor no action for the L.1000 sterling.

No. 3. 1753, Feb. 15. MR HALDANE *against* THE DUKE OF DOUGLAS.

THE Marquis of Douglas having given his daughter, Lady Jean, bond of provision only for 20,000 merks, the Duke her brother, in 1719, augmented it to 50,000 merks, payable at her marriage, but with annualrent from the date, but reserved a power to revoke and alter as to the additional 30,000 merks; and in 1728, Lady Jean having occasion for some money, the Duke lent her at different times L.700, for which she gave him two bonds in the usual form, with annualrent and penalty; and in 1736, after the death of the Marchioness her mother, he gave her a bond for an additional annuity of about L.161 sterling, making, with the interest of the 50,000 merks contained in the former bonds (which are therein shortly mentioned) L.300 sterling, which he obliged him during his pleasure to pay her at four terms in the year, but reserved to himself