

FACULTY.

SECT. I.

Faculties that are Consistent in Law.

1729. November 28. MURRAY against FLEEMING and Others.

A HUSBAND disposed his land-estate to his wife in liferent, and to any of his blood relations she should think most fit to be nominated, by a writ under her hand, in fee. A nomination was accordingly made after the husband's decease; and against the nominee, claiming right to the estate, it was *argued*, *1mo*, That this was an unhabile way of transferring property, because a fiar cannot be created by the nomination of one who is not fiar. *2do*, It is contrary to the maxim, that a fee cannot be *in pendente*, and yet here is a fee conveyed, a property established, but no proprietor until the wife chuse to exerce her faculty. *Answered*, to the *first*, There is nothing in reason, or in law, to bar a fiar to name his successor in what shape he pleases; it is not material who names, but whether the nomination be by the authority of the fiar; and this is not more than for one to give a mandate to sell his estate. To the *second*, The property is not transferred until the wife interposes her nomination; in the interim, the property remains with the disponent, and after his death is in *hereditate jacente*. THE LORDS found, that this disposition, granted by the husband to his wife, did sufficiently enable her to nominate persons to succeed to the subjects disposed, and that she having accordingly exercised that power, the persons named by her have right to succeed. See APPENDIX.

No 1.

A person disposed lands to his wife in liferent, and any relation she should name in fee. The wife named a fiar. This found a habile conveyance of the property.

Fol. Dic. v. 1. p. 289.