

1745. July 9. BIGGAR *against* HELEN BEE.

A TENANT of the Duke of Buccleugh having a pretty large farm and brewery, with the exclusive privilege of serving a coaliery of the Dutchess', dying, leaving a wife and two daughters, and about 11 or 12 years of his tack to run; the farm and brewery were continued as formerly, and a trade of driving coals to Edinburgh also carried on with the cattle belonging to the farm. The whole was managed by the mother, and malt bought and sold in her name, and the accounts and some bills that were given for the ale and coals also in her name; but when any sub-tenants were to be removed or pursued for rents, that was in the daughters' names, who were heirs in the tack. The mother survived one of the daughters, but predeceased the other daughter only about six weeks, and for about three weeks of that time the daughter continued in the house; and the farm, brewing, and coal driving were carried on as formerly; but she was then carried into Edinburgh where she made her testament, naming Biggar of Wolmet and James Jackson in Dalkeith her executors. Upon her death, Helen Bee, as one of the nearest of kin of Christian Ramsay the mother, claimed the whole executry; and the question being brought before us by advocation, we found, *1mo*, That all the moveable goods that were in the mother's possession at her death, were sufficiently established in the daughter by her possession of them, and ought therefore to be confirmed as *in bonis* of the daughter, agreeably to the decisions M'Whirter against Miller, and Bairds against Gray;* (*voce* HUSBAND AND WIFE,) and this we found *nem. con.* As to the accounts and bills granted particularly for ale or coals, as the tack was the daughters, we considered the mother only as a *negotiorum gestor* or *præposita*, and therefore found her executors also entitled to them. As to the bonds and bills bearing no relation to the brewing or coal driving, we once found it presumed that they were the result of these, unless the contrary were proved; but afterwards we remitted to the Commissaries to hear parties, and to take what evidence should be offered on either side. (See DICT. No. 216. p. 6008. and No. 21. p. 3841.)

No. 19.
Effect of possession
of moveables.

1751. February 20. SPENCE *against* CREDITORS of ALCORN.

ONE being decerned executor *qua* nearest of kin to her grandfather, sued one of his debtors in two bonds, and used inhibition. The debtor corroboration held to be equal to pay-

No. 20.

* See DICT. No. 37. p. 14393. and No. 38. p. 14395.