

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 coalery 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.

No. 20.
ment, and to vest
the debt without
confirmation.

rated the bonds, and the corroboration being produced in Court, she obtained decret, and thereon adjudged, but neglected to confirm. In a competition of the creditors of that debtor, she and her husband were ranked and preferred on her inhibition and adjudication, which she conveyed to her husband; but before the ranking was finished the wife died, and the other creditors observing that there had been no confirmation, objected that both decreets were void, and that the husband's right was *a non habente*, and so Lord Minto, Ordinary, found. But on a reclaiming bill we unanimously altered, and sustained both the diligence and his right; and, as we had already found, that now since the act 1690, a nearest of kin's possession of *corpora* without confirmation vested the property; though we have not found that naked possession of a bond or bill vested the *jus crediti* in the nearest of kin, and it would be dangerous to find so, and make the right to debts uncertain, and to depend on parole evidence; yet we agreed that a nearest of kin might effectually discharge a debt without confirmation, and if he could, then a corroboration must be equally effectual; for if the wife in this case could validly have discharged these two bonds and innovated the debts, and taken a new bond in her own name, there could be no reason why a bond of corroboration should not as effectually vest the *jus crediti* in her. *Vide* M'Whirter against Miller, 20th July 1743, and Bairds against Gray, 3d February 1744, *voce* HUSBAND AND WIFE. *Vide* No. 19.

1753. July 23.

SIR ARCHIBALD GRANT *against* Mrs BURROWS and Her SISTERS.

No. 21.
Executor in Eng-
land, whether
obliged to account
in Scotland?

SIR ARCHIBALD GRANT became debtor to Colonel Burrows by an heritable bond for L.2000 sterling, which he conveyed to Cartwright his father-in-law, who was thereupon infeft in Sir Archibald's estate in Scotland; and on Cartwright's death, (Colonel Burrows being also dead) Mrs Burrows succeeded as one of the heirs-portioners to her father, and sued Sir Archibald Grant upon the bond, who pleaded compensation on debts due by Burrows. The Court found that there was sufficient evidence that the conveyance by Burrows to Cartwright was in security of L.3000 sterling, that Burrows was by marriage articles bound to secure to himself and his wife and longest liver. Therefore Sir Archibald afterwards alleged, that Mrs Burrows had administrated to her husband, and recovered out of his effects the L.3000 due to her; and therefore the L.2000 was now a simple trust for behoof of Burrows' heirs, and that the compensation takes place. Answered,