debt,—still probable by writ or oath. The supposed debtor must say that he paid, and he is not entitled to add qualities. I am not obliged to go to his *oath;* his *writ* is as good as his oath. The acknowledging a debt to be due before the six years have elapsed, is nothing; but, after the six years, it is good to interrupt. Any acknowledgment by *writ* is sufficient, and *that* we have here.

HAILES. I doubt whether words written by a man, not in his own name, but to assist another, be writ in the sense of the statute.

SWINTON. I cannot make a distinction between promise of payment, *within* the six years, or after. Payment was made by the heir of the debtor, who might possibly have been ignorant of the facts.

GARDENSTON. A promise to pay, during the currency of the years of prescription, is an argument of the debt having been paid within those years, because otherwise the promise would have been enforced; but the case is very different when the promise or acknowledgment is made after the years of prescription have run.

ESKGROVE. My doubt is as to the payment being made by the heir of the debtor. An heir, or an executor, may sometimes know that the debt subsists; but *that* is not generally the case. *Resting owing*, in the case of an executor, must be different from that in the case of the original debtor. The executor can only swear as to belief,—the original debtor can swear from knowledge.

JUSTICE-CLERK. I have no occasion for the *oath*, since I have the *writ* of the debtor admitting the debt to be due.

HENDERLAND. An heir or executor can only go on the information of others.

On the 3d February 1784, "The Lords sustained the action, and repelled the defences."

Act. A. Wight. *Alt.* H. Erskine. *Reporter*, Stonefield.

1783. *December* 4. Mrs JEAN M'CONOCHIE, and HER HUSBAND, *against* JAMES MARSHALL and THOMAS RUTHVEN, Cumming's Creditors.

SERVICE OF HEIRS.

Necessity of a General Service in order to transmit personal rights in burgage tenements.

[*Faculty Collection, IX.* 210; *Dict.* 14,446.]

ESKGROVE. I doubt whether magistrates in burghs can give such infeftments in personal rights.

BRAXFIELD. A service is necessary in order to transmit from the dead to the living. In burgage tenements this is not necessary, for the magistrates are supposed to know the rights of parties. This is the case when the predecessor died infeft. There may be more difficulty as to personal rights: but I should think that, even in that case, the magistrates might have given infeftment *causa cognita:* but it seems to me that they did not properly inquire, and that they have mistaken the fact; for they supposed that Jean M'Conochie was fiar. Now, from the case of Lord Napier, it is plain that not she, but Beveridge, was fiar.

ELLIOCK. I think that a service is necessary; for, without it, nothing more will be carried but the personal rights.

MONBODDO. The power of the magistrates goes not so far as to enable them to grant infeftment *more burgi* in personal rights, without cognition.

On the 4th December 1783, "The Lords sustained the objection;" altering the interlocutor of Lord Alva.

1784. *February* 10. DANIEL FRASER and OTHERS *against* JAMES GIBB.

EXECUTOR.

Debtors are not bound to make payment to Executors or Nearest of Kin, unless confirmation has been obtained as to their full debts.

[*Faculty Collection, IX.* 125; *Dictionary,* 3921.]

ESKGROVE. A partial confirmation vests a right in all parties concerned; but beyond *that* it does not reach. The debtor may pay safely, but he cannot be compelled to pay.

BRAXFIELD. The Court has gone far enough in relieving the lieges from the burden of confirmation: a partial confirmation gives a *jus ad rem,* but not a *jus in re.*

On the 10th February 1784, "The Lords remitted to the Ordinary to pass the bill;" altering the interlocutor of Lord Swinton; being clear.

Act. G. Ferguson. *Alt.* Mat. Ross.
