

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 infest. There may be more difficulty as to personal rights: but I should think that, even in that case, the magistrates might have given infestment *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 infestment *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.