not taken properly, the debtor is free. As to the case of Alcorn; when there are different *correi debendi*, document taken against one is enough, both by the civil law and our law. The assistants charged were not liable for the debt: it was a company debt,—the corporation ought to have been called, and not any individual. The calling a few is doing nothing.

MONBODDO. In the case of Alcorn, there was no *correus debendi*, but a cautioner: a decreet of registration is no document.

On the 24th November 1784, "The Lords found that the decreet of constitution, at the instance of the late Sir James Grant, with the horning and execution thereon, sufficiently interrupt the negative prescription, and therefore repelled the objection of prescription made to the interest produced and claimed on by the present Sir James Grant;" adhering to interlocutor of 21st July 1784.

Act. Ilay Campbell. *Alt.* Al. Abercrombie.

Reporter, Monboddo.

Diss. Braxfield, Hailes, Ankerville, Henderland, President.

[Justice-Clerk did not vote, having declined himself.]

1784. *July* 23. WILLIAM LENNOX and OTHERS *against* ROBERT GRANT and OTHERS.

SERVICE AND CONFIRMATION.

Confirmation as executor of a general disponee, who had not been confirmed nor in possession, not sufficient to give right of action respecting the subjects disponed.

[*Fac. Coll. IX.* 283; *Dict.* 14,381.]

MONBODDO. Mr Grant's right is defective: he has made up a title to Mrs Marshall, but *she* had made up no title to the bond. He has now made up a title to the disponee; but *that* comes too late after a competition.

ESKGROVE. Mrs Marshall had no possession of the debt, though she had of the interests received. The confirmation was an *ex post facto* business.

BRAXFIELD. Mr Grant, instead of confirming to Mrs Marshall, ought to have confirmed as executor-creditor on the disposition. Mr Grant has since obtained a confirmation, irregular indeed, but still vesting. There is no one that can challenge it, for he has besides a general disposition.

ESKGROVE. The difficulty here is, that the confirmation was not expede to the subject as *in bonis* of the husband to whom it belonged, but as *in bonis* of the wife to whom it did not belong.

JUSTICE-CLERK. Had Mrs Marshall died intestate, the nearest in kin would have taken the bond: is not her disposition equal, at least, to a right *ab intestato?*

ESKGROVE. Mr Grant cannot be in a better situation than Mrs Marshall; and, had she been alive, she could not have adjudged without previous confirmation.

BRAXFIELD. The present question is not, Who would be preferred on a competition? A confirmation, though erroneous, vests the *jus exigendi.* If the debtor cannot object to this, What title have the creditors to object?

HENDERLAND. Here there is a person having a proper *legal* title to the debt, and no injury is done to any one, by its being held good, for he has found caution.

On the 22d July 1784, "The Lords repelled the objection;" adhering to the interlocutor of Lord Ankerville.

Act. Ch. Hay. *Alt.* R. Cullen.

Diss. Alva, Hailes, Monboddo, Eskgrove.

Non liquet, Gardenston.

Absent. President, Elliock, Ankerville, Swinton.

November 26.—ESKGROVE. Competing creditors are as well entitled to object as the common debtor. In that view, I should think that the interlocutor reclaimed against, goes farther than any hitherto pronounced. I never understood that a debtor could be compelled to pay on a general disposition, if he objected to the making such payment. A general disposition is a title to pursue, and no more. If Naesmith were alive and pursuing, the objection would be good: how can her assignee be in a better situation than herself? The objection is not *jus tertii,* as it would be were the confirmation to the just creditor.

SWINTON. Naesmith drew the annualrents: Will not that make some difference?

ESKGROVE. That will only give her a right to the annualrents that she drew.

JUSTICE-CLERK. Thought that the possession was of some consequence. Here the proper officer, that is, the Commissary, has confirmed, the assignee of Naesmith, and this bond is given up as *in bonis* of Naesmith. This may be erroneous; but the objection cannot be made by the creditors of Bedley, who paid the interest to Naesmith: He could not have objected to the adjudication; neither can his creditors.

BRAXFIELD. I am very unwilling to cut down the diligence of lawful creditors upon critical objections. Naesmith had a *jus ad rem* to the subject. Although she had not the power of administration, she might have gone to the Commissaries and obtained the administration, and no person could have opposed her. Grant, her assignee, could have confirmed, and he was entitled to have confirmed, in opposition to any creditor of Marshall the original creditor. A confirmation may be erroneous, and yet it may give a *jus exigendi.*

If one, who is not nearest in kin, should confirm in that character, the confirmation is erroneous; but the debtor cannot be heard to object or to reduce it.

ESKGROVE. I have been always taught, that the possession of moveables, and still more the possession of the produce of a debt, can only be effectual to the extent of the subjects so possessed. A reduction is unnecessary: the objection is, that the confirmation, as to this subject, is no better than waste paper, for the confirmation says, that the bond was *in bonis* of Naesmith, which is not the fact.

HENDERLAND. I regret the change that has been made on our law as to confirmation, and therefore I will not go farther than decisions have gone. Here there is nothing but a *naked title*: if the argument for Grant be good, there is an end of all security to the lieges. I hold the effects to remain in the person of Marshall. The Act 1696, which forbids charges to confirm, does not take away the interest of creditors. The plea of the creditors is,—You have omitted one step of diligence, and we may take the benefit of your omission. The debtor might have refused to pay, because he was not in safety to pay; he might have said, "You are bound to make forthcoming, but the subject is not that for which security to that effect is granted."

PRESIDENT. I differ so far from my brother, Lord H———, that I think the alteration on the consistorial law equitable. This decision, however, goes much farther, and makes a much greater alteration in the forms of the Commissary Court. The bond was *in bonis* of Marshall: the disposition to Naesmith did not give a *jus exigendi*, for there cannot be such a thing, where no action lies. Payment of interest is nothing: the confirmation of Grant to Naesmith could not carry the bond, which was not in Naesmith. There is no proper title yet made up. A debtor is not bound to pay, for the subject was not *in bonis* of the person to whom the confimation was expede.

BRAXFIELD. Confirmation is a *decree*, and therefore must be good till reduced: Who is there that can be heard to reduce this confirmation?

JUSTICE-CLERK. When Grant confirmed to Naesmith, his caution would only extend to the persons having right, claim, or concern in *her* executry.

On the 26th November 1784, "The Lords sustained the objection to Grant's interest;" altering their interlocutor of 22d July 1784.

Act. Ch. Hay. *Alt.* James Grant.

Diss. Kennet, Braxfield.