

And, on advising a second reclaiming petition and answers,

No. 5.

The Court were of opinion, that there was a difference between this case and that of Pringle against Veitch. In that case, the coincidence of debt and credit was equal and unlimited, and the principle of extinction *confusione* had full operation. In this, the proper debtor was the entailed estate, and there was no room for extinction *confusione*.

A general opinion likewise prevailed, that to dispense with the necessity of confirmation, in any farther degree than was sanctioned in that case, would be unsafe and unexpedient.

The Lords adhered (23d June 1808.)

Lord Ordinary, *Bannatyne*.

Act. Jo. Clerk & Dav. *Douglas*.

Alt. *Advocatum*.

H. Moncrieff, W. S. and *Ja. Horne*, W. S. Agents.

P. Clerk.

J. W.

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1808. June 23.

ROBERT BLACKADDER and Others, against JOHN BLACKADDER and Others.

No. 6.

MARGARET BLACKADDER, wife of John Heriot, died on the 28th July 1786, pre-deceasing her husband, and leaving no issue, settlement, or marriage-contract.

Confirmation necessary to establish a right to the dead's part in the nearest in kin. Parole proof of the date of lodging bond of caution and inventory with the commissary clerk incompetent.

Alexander and James Blackadder, her brothers-german, were her nearest in kin; and had right to one half of the goods in communion.

James died before any measures were taken respecting her succession. Alexander, then her sole and nearest in kin, having raised an edict before the commissary of Lauder, was, on the 20th March 1804, decerned her executor dative.

On the 12th March 1806, Alexander died *in cursu diligentia* before the confirmation was expedite. On the 3d April, an extract of the confirmed testament was given out by the clerk, bearing date the 1st day of April.

A competition then arose between Robert Blackadder the brother consanguinean and disponee of Alexander, on the one hand, and John Blackadder and others, children of the deceased James, brother of Margaret Blackadder, on the other. Robert offered to prove by parole evidence, that an inventory had been made out, and bond of caution executed; all which had been transmitted to the commissary clerk on the 18th February 1806, a period of three weeks before the death of Alexander.

But John referred to two cases of precisely similar circumstances in which this point had been already determined, 24h January 1745, Carmichael against Carmichael, No. 12. p. 9267; and 13th February 1760, Ogilvie against his Majesty's Advocate, No. 92. p. 3916.

No. 6.

The Court were of opinion that the proof was incompetent ; and pronounced the following interlocutor (June 23, 1808 :) “ Prefer the children of the deceased James Blackadder to the fund *in medio*, and decern accordingly : Find Robert Blackadder liable in payment of the full expense of extract, but no other expense, and decern.”

Lord Ordinary, *Glenlee*. Act. *Raird*. Alt. *John Dickson*.
 Agents, *John Craw, W. S. & Gibson and Oliphant, W. S.* Clerk, *Mackenzie*.

J. W.

Fac. Coll. No. 60. p. 225.