

1737. July 5. CORNETT OGILVIE *against* MATTHEW STEWART.

No. 3.

Effect of a military inventory in terms of the articles of war.

UPON the death of Captain Maxwell in England, Major Stewart, pursuant to the articles of war, (art. 43) inventoried and took possession of his effects, particularly of a promissory-note of Cornett Ogilvie's of L.100 sterling, and paid the funeral charges, L.57 sterling. The nearest of kin in Ireland renounced the office of administration in favour of Nicholas Scott, at London, a creditor, who thereupon got letters of administration, and to whom Cornett Ogilvie paid the L.100. The nearest of kin then confirmed in Scotland, and in concert with Major Stewart's son, who was still possessed of the note, sued Cornett Ogilvie. The Lords first demurred whether the articles of war did not give Major Stewart a preference even to the administrator; but the difficulty was removed, and the Lords thought that the Major had not the *jus exigendi* to recover debts; and they found, *1mo*, That the nearest of kin having renounced the office in England, neither she nor Stewart have right to sue for payment of this note; *2do*, They sustained the discharge by the administrator, reserving Stewart's action against the administrator in England as accords, notwithstanding some suspicions of collusion objected to that discharge.

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1737. July 27. ROCHEAD *against* Mr HUGH MURRAY.

No. 4.

A GENERAL disponee in trust for uses preferred to the office of executor before the nearest of kin.—*N. B.* The disposition excluded the nearest of kin from the office, but did not name an executor. (See DICT. No. 2. p. 3816.)

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1738. November 7.

MIRRIE, and LOCKHART, her Husband, *against* INGLIS.

No. 5.

A DEBTOR of the executory cannot lawfully pay one of the executors-creditors, without the knowledge or consent of the rest, but upon his own peril; and therefore such a payment made to an executor-creditor, whose debt was afterwards reduced, whereof the payer could not pretend ignorance, that payment was disallowed in a process at the instance of another of the executors-creditors. (See DICT. No. 62. p. 16115.)