

No. 53. nephews and nieces of the first defunct; the former alleging, that though the office had never been vested in their father, yet that the decree-dative fully established the dead's part in him so as to transmit to his children, who therefore were entitled to the office of executors to the first defunct; and the other nearest in kin contending, that since there had been no confirmation, the decree-dative was of no effect; the Lords remitted to the commissary to confirm the nearest in kin, without regard to the decree-dative.

Fol. Dic. v. 4. p. 270. Rem. Dec. D. Falconer. Kilkerran.

* * This case is No. 12. p. 9267. *voce* NEAREST OF KIN.

No. 54. 1751. February 20. SPENCE *against* WILSON.

As the nearest of kin obtaining possession of moveables needs not confirm, so a debtor voluntarily paying to the nearest in kin, will be effectually discharged by him, though the nearest in kin have not confirmed the debt; but it was questioned, if a bond of corroboration obtained by the nearest in kin superseded the necessity of confirmation. The Lords found, That it did; upon the answer made, That if the nearest in kin could take payment and discharge, he could certainly give up the old bond, and take a new one from the debtor; and if so, there could be no reason why a corroboration should not have the same effect to establish the debt in his person; which, in respect of circumstances, it might be reasonable for him to take rather than give up the old bond.

Fol. Dic. v. 4. p. 271. D. Falconer, Kilkerran.

* * This case is No. 39. p. 14399.

* * A similar judgment was pronounced in the case Watson against Marshall, No. 66. p. 7009. *voce* INHIBITION.

No. 55. 1759. December 8. SIR WILLIAM MONCRIEFF *against* CREDITORS OF SIR THOMAS MONCRIEFF.

THE heir of a marriage is entitled, without the aid of a service, to challenge deeds contrary to the settlements of the contract of marriage.

Fol. Dic. v. 4. p. 270. Fac. Coll.

* * This case is No. 31. p. 12871. *voce* PROVISION TO HEIRS and CHILDREN.

What understood to be a general assignation; see GENERAL ASSIGNATION.

See EXECUTOR.

See SUBSTITUTE and CONDITIONAL INSTITUTE.

See APPENDIX.