

1778. February 11. MARY NASMITH *against* COMMISSARIES of Edinburgh.

No 93.  
Found in conformity with Brodies *against* Stephen, No 90. p. 3911.

THE whole effects of a defunct being inventoried and appretiated by the Commissaries, a partial confirmation, to a small amount, was demanded by the executrix, Nasmith, which the Commissaries refused to grant.

THE LORD ORDINARY refused a bill of advocation against this judgment; but, upon advising a reclaiming petition and answers, the Court were of opinion, that the Commissaries are obliged to grant confirmation upon any part of the defunct's effects that shall be offered them for that purpose. This judgment was given upon the same grounds as in the case Agnes and Jean Brodies *contra* the Commissary-depute of Murray, 10th August 1753, No 90. p. 3911. The only difference betwixt the two cases was, that, in the former, a partial inventory of the effects had only been made, to the extent of which the confirmation was demanded. This was not considered by the Court as forming any distinction of consequence betwixt that case and the present.

THE COURT 'remitted the bill of advocation to the Commissaries, with instructions to allow the confirmation to proceed, as craved by the petition.' See NEAREST OF KIN.

For Commissaries, *Solicitor General.*

Alt. C. Hay.

Clerk, *Tait.*

*Fol. Dic. v. 3. p. 191. Fac. Col. No 13. p. 26.*

1779. July 27.

WALTER SLOAN-LAURIE, *against* ALEXANDER SPALDING-GORDON.

No 94.  
Tho' a partial confirmation, *qua* nearest of kin, is found to transmit the whole, yet subjects not specially confirmed, and not intromitted with, remain still *in bonis* of the defunct, and must be taken up accordingly, and are affectable by his debts.

IN 1741, Walter Laurie granted a legacy, in favour of Walter Sloan, in the form of a bond, for L. 60, payable one year after his death. Laurie died soon after; and, in 1745, James Laurie, his nephew, and only next of kin, had a general intromission with his moveable effects, and obtained himself confirmed in a part of them.

Walter Laurie, some time before his death, had conveyed over to Robert Gordon a moveable bond for L. 500, which Gordon owed him, 'reserving the annualrents during his own life.' The interest, therefore, remaining due to Laurie on the bond, when he died, came to be part of the moveable effects *in bonis* of the defunct.

IN 1775, Sloan, who had got no payment of his legacy, confirmed executor-creditor to Walter Laurie in this subject, and brought an action against Alexander Spalding-Gordon, the representative of Robert, for payment of these interests.

The defender, in bar of this action, *contended*, that the whole of the defunct's moveable effects, and of consequence, these interests were vested in James