evidence, that he actually intromitted with a horse and riding-furniture, which had belonged to James, with his books, linens, and other clothes, being the whole effects he was master of, and that he had paid any debts which he owed. No. 40.

"The Lords, having advised the testimonies of the witnesses adduced, in consequence of the former interlocutor, whereby it appears, that Alexander Pringle had an universal intromission with his brother's effects, sustain the defence, and assoilzie the defender."

Act. *Macqueen, Solicitor-Dundas.* Alt. *Lockhart.* Clerk, *Pringle.*

Fol. Dic. v. 4. *p.* 269. *Fac. Coll. No.* 92. *p.* 343.

1776. *December* 27. LESLIES *against* ABERCROMBIE.

No. 41.

ABERCROMBY, after his wife's death, being pursued by her nearest of kin for her share of the goods in communion, and particularly for the half of the sum in a bond of provision granted by the wife's father, but which he, together with his wife, had renounced for a new security taken payable to himself and his heirs, of which the term of payment was not yet come, the defender pleaded, That his wife having left a son, who survived her a few days, the right transmitted *ipso jure* to the child; and although he died before confirmation, the father's possession as administrator for his child, was equivalent to a confirmation, and therefore the father's right to the sum in this bond, as nearest of kin to his son, must exclude the right of the pursuers, as nearest of kin to the mother. Answered, Possession supersedes the necessity of confirmation only where there is an actual apprehension of the *ipsa corpora* of moveables; but there can be no possession of the sum in a bond, of which the term of payment had not arrived. The Lords repelled the defence. See APPENDIX.

Fol. Dic. v. 4. *p.* 270.

1784. *February* 19. RICHARDSON *against* SHIELLS.

No. 42.

ALEXANDER ORR had become bound to dispone certain lands, but died before fulfilling that obligation, though after a bond had been granted to him for the price. His eldest son, who was his universal disponee, possessed the lands for some time. He then obtained a sequestration, in terms of the act 1772, of the effects belonging to himself and to his father. Shiells, a creditor of the father, expede a confirmation as executor-creditor, and gave up in inventory the bond above mentioned, for which a competition ensued between him and the factor under the sequestration; the latter pleading, That by the general disposition, followed by possession of the lands for which the bond was granted, the sums in question were completely transferred to the general disponee, and fell, of course,

No. 42.

under the sequestration. Answered for Shiells, That the nearest in kin, or a general disponee, may, without confirmation, acquire the property of particular subjects in consequence of possessing them; and if the bond had been paid, or renewed to the son, the creditors of the father could no longer have attached it as *in bonis* of their debtor. But this will not apply to the bond in dispute, which must still be viewed as the property of the defunct. The Lords preferred Shiells in virtue of his confirmation.

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

*** This case is No. 20. p. 14377.

1784. *June* 29. JAMES MACDOWALL *against* WALTER MACDOWALL.

No. 43.
Possession of the defunct's moveables by the nearest of kin, vests him in the right of the subjects possessed only.

PATRICK MACDOWALL was creditor in a personal bond. Upon his death, James, his only child, succeeded to him, and had an intromission with his estate, real and personal, but intermeddled not with that debt.

James granted to one of his children a general disposition of his effects. This disponee having died, his son James Macdowall, in his right, laid claim to the bond; in which demand he, being the great-grandchild of Patrick, was opposed by Walter, a son of the elder James, and of course the grandson of Patrick, and his next of kin.

The issue of the competition depended on this point: Whether the elder James, who expede no confirmation, had, by a general possession of his father Patrick's other funds and effects, vested himself with a right to the debt in question, so as he could transmit it to his disponee; or whether the debt still remained *in bonis* of Patrick, descendible to his nearest in kin?

Pleaded for the heir of the disponee: In no period of our law has the right of succession *ab intestato* been denied to the kindred of deceased persons. The peculiarity of feudal property, in the origin of that establishment, having circumscribed the right which was in the ancestors only, contradicts not this observation. But, in heritage and moveables, the right of blood was equally the title of succession; though, with respect to the former, it was not allowed to operate before it had been certified and declared by certain prescribed solemnities; while, as to the latter, these were not required. The course of moveable succession, however, has in fact been interrupted by the following adventitious circumstances.

Of old, the clergy were deemed the only fit depositaries of all trusts. On this principle they executed the testaments of deceased persons; or they authorised or controuled the management of the executors nominated by testators; whence arose the practice of exhibiting inventories, and of the subsequent confirmation, with its quota of emolument. Of the moveable effects of those who died intestate, the bishops, by themselves, or by others of their appointment, assumed the sole dis-