

1630. December 22.

A. against B.

## No. 31.

A clock belonging to the heir, as an heirship moveable, was ordered to be delivered to the executor, upon finding caution, the heir not having been served.

THE executor of umquhile B. confirmed in his testament a *knock*, which should pertain to the heir; and the knockmaker, who held the knock in his hands the time of the said B.'s decease, is pursued for delivery thereof to the executors, and decerned by the Commissaries. He suspends, alleging he was pursued by the executor, on the one part, and by A. B. who had bought the knock from the apparent heir, on the other part, who had best right thereto, seeing the knock was heirship goods, and so not confirmable in testament, and that he had bought the same from the apparent heir. It was answered, That the knock was confirmed with the rest of the moveables, and decret obtained against the haver thereof, at their instance, and so could pertain to no other, except the apparent heir were served heir. The Lords ordained the knock to be delivered to the executors, they finding caution to make the same forthcoming to the heir, when he were served, or to the creditors, when they would seek adjudication thereof.

*Fol. Dic. v. 2. p. 369. Auchinleck, MS. p. 7.*

1665. June 23.

PROCURATOR-FISCAL of the COMMISSARIOT of EDINBURGH against THOMAS FAIRHOLM.

## No. 32.

Confirmation found necessary, though there was a disposition *omnium bonorum*.

THOMAS FAIRHOLM being charged to give up an inventory of the goods and gear pertaining to umquhile Alexander Deninstoun, whose daughter he had married, he suspends, on this reason, that the defunct had granted a disposition to one of his daughters of his hail moveable goods and sums of money, so that he had nothing the time of his death, and there needed no confirmation, but he might lawfully possess by virtue of his disposition; and there was no law to force persons, in such a case, to confirm, neither had it ever been sustained by the Lords. It was answered, That it was *juris publici* to have the goods of defuncts confirmed; that nearest of kin, children, creditors, and legatars, might know the condition thereof; and this defunct's moveables, albeit disposed, yet not delivered, remained *in bonis defuncti*, and so behoved to be confirmed.

The Lords having read the disposition, and finding it to be general, *omnium bonorum*, that he had, or should have, the time of his death, and there being nothing alleged of any onerous cause, or that it was before his sickness, albeit the case was new, yet they found there was necessity of confirmation in this case; but if it had been a disposition only of special things, as bonds or goods, or had been for any onerous cause, or had been made *in liege pousti*, and any symbolical delivery, the Lords were not so clear in it, but resolved to hear such cases in their own presence, when they should occur.

*Fol. Dic. v. 2. p. 369. Stair, v. 1. p. 286.*