

same depended upon a cause, viz. the contract of alienation, whilk was prior to the pursuer's contract of marriage, and infestment following thereupon, and so ought to be drawn back to its own cause, and should defend him in this judgment possessory. It was *replied*, That because the contract of alienation was no real right to debar the pursuer frae enjoying her infestment, proceeding upon her contract of marriage, which was so favourable, that by the law and practice of this realm, wives were not holden to reduce infestments, given by their husbands, in prejudice of the infestments granted conform to the contract of marriage, although clad with possession; but immediately after their husband's decease, they are in use, upon their right, to pursue either upon removing, or for mails and duties of the lands wherein they are infest, conform to their contract of marriage, and need not to pursue for reduction of rights posterior to their infestment, although cald with possession. THE LORDS repelled the exception.

Fol. Dic. v. 2. p. 176. Auchinleck, MS. p. 267.

1631. July 22.

MACK *against* PARBON.

GEORGE MACK pursued — Parbon relict, and intromissatrix with umquhil Home, her husband's goods and gear, for a sum owing by her to the pursuer. She alleges, she cannot be pursued as intromissatrix, because she has confirmed herself executrix to her husband, as a creditor for the condition due to her by contract of marriage. It is replied, That this confirmation cannot prejudice the pursuer, who had intented his summons long before the confirmation. It was duplied, That, notwithstanding of the pursuer's diligence, yet, in respect of her debt, she ought to be preferred to all others, her husband's creditors; whilk the LORDS found relevant.

Fol. Dic. v. 2. p. 176. Auchinleck, MS. p. 258.

1672. November 14.

WILLIAM SMEATON *against* The EXECUTORS of JAMES DUNLOP.

IN a suspension raised at Smeaton's instance against the Executors-Creditors of James Dunlop, upon this reason, that the decret was wrongously given against him for sums of money he had paid to the defunct's relict, who was a preferable creditor by her contract of marriage, as likewise decerned executor-creditor by the Commissaries; it was *answered*, That the said relict being only decerned but never confirmed, had no title in her person, and therefore decret was justly given at the charger's instance, who was not only decerned, but confirmed executor.

No 4.

No 5.
Found again
in conformity
with Cranston
against Home,
No. 1,
p. 11823.
See No 11.
p. 11833.

No 6.

Found as
above.
See No 1.
p. 11833.

No 6.

THE LORDS did suspend the letters notwithstanding of the answer, in respect that the money was *bona fide* paid to the relict who was decerned, but died soon after, before she could be confirmed, and against whose preference in a double pointing, if she had been compearing, no reason could have been alleged.

Fol. Dic. v. 2. p. 176. Gosford, MS. No 519. p. 275.

*** Similar decisions were pronounced, 20th January 1631, Creditors of Brown, No 4. p. 2428, *voce* COLLUSION; and 9th February 1662, Crawford against Earl of Murray, No 63. p. 2613, *voce* COMPENSATION. See No 11. p. 1184.

1674. December 16.

Sir WILLIAM DOUGLAS of Kelhead *against* The CREDITORS of the deceased COUNTESS of QUEENSBERRY.

No 7.

Drugs furnished to a defunct, while on death-bed, and his funeral expences, are both privileged and preferable to his other debts.

IN a multiplepointing raised at the instance of the Earl of Queensberry, as executor to the Lady, his mother, against several of her Creditors, compearance was made for Kelhead, who *alleged*, That he ought to be preferred to all other creditors, because not only the deceased Countess was debtor to him by a bond for a most onerous cause, but likewise she disposed to him her whole goods and gear for security, in case she should not pay the same during her lifetime; and accordingly Kelhead did arrest the said moveables in the Countess's hands, and immediately after her decease, entered to the possession by way of instrument, and offered to confirm himself executor-creditor. Compearance was likewise made for James Borthwick, apothecary, who produced a bond granted to him by the deceased Earl and Countess of Queensberry, as likewise an account for drugs furnished at the time of their sickness; as also, compearance was made for one Irvine, who produced a bond granted by the Countess for furnishing sold by him to the Countess for the Earl's funerals, and thereupon they both craved to be preferred to Kelhead, not only because their debts were privileged, but because they had done diligence, and recovered decreets against this Earl of Queensberry. It was *answered* for Kelhead, That he ought to be preferred notwithstanding of these allegeances, because he was not only a creditor, but had a disposition of the whole moveables in question, and had not affected them by arrestment, but had taken possession by way of instrument before any of them had done diligence; neither will James Borthwick pretend any privilege for the sums contained in his bond, because it did bear borrowed money, and was lent long before the Earl took the sickness whereof he died; and as to any account or bond for furnishing drugs, and for funeral charges upon the Earl's account, albeit they might pretend privilege if they were pursuing his executors, yet where the competition is in a pursuit against this Earl