

No. 22.

*exigendi*. Such was the case of the debtor in the bond in question; and it is absurd to say that he had then the same title to object which he would have had prior to confirmation, or in the lifetime of Katharine Nasmith. Nor does it follow, because, if she had procured herself confirmed, it must have been *qua* executrix to her husband, that the present confirmation as executor to her is erroneous. Though undoubtedly she could not be her own executrix, and of necessity must have obtained confirmation in the character of that of her husband, is that any reason why her general disponee may not be her executor? Besides, this confirmation being a *res judicata* by the commissary's decree, must, notwithstanding the distinction that has been attempted, be held *pro veritate*, till set aside by a reduction.

A majority of the Court seemed to consider confirmation in the person of a general disponee, as essential for transferring to him the right of property, or *ius in re*; and that Katharine Nasmith having obtained none, was not vested with this right, which therefore could not be transmitted to her disponee by confirmation as her executor. Some of the judges, on the other hand, contended, that the confirmation, however erroneous, yet not being brought under reduction, should have full effect.

The Lords "sustained the objection to Robert Grant's adjudication."

Lord Ordinary, *Ankerville*. For objectors, *C. Hay*. Alt. *J. Grant*. Clerk, *Home*.  
*Fol. Dic. v. 4. p. 268. Fac. Coll. No. 180. p. 283.*

---

1785. June 28.

CREDITORS OF PARK *against* PATRICK MAXWELL.

No. 23.

Service and confirmation necessary to render valid a decree of adjudication in favour of an executor.

ARTHUR PARK was indebted in a sum of money to Hugh Warden, whose general disponee, unconfirmed, obtained decret for the debt; and on that ground an adjudication was afterwards deduced. To this adjudication other creditors

Objected; Without previous confirmation the decree could not be valid; 26th November, 1784, *Lenox contra Grant*, p. 14381, *supra*; of consequence the diligence which followed upon it was likewise void.

Answered: If a debtor acknowledges the right of his creditor's successor, by granting to him a bond of corroboration, the necessity of confirmation will be superseded. The same consequence should seem to follow from his submitting to the passing of a decree against him at the instance of the heir, and so the point has been explicitly determined; March, 1686, *Children of Bangor contra Duke and Duchess of Hamilton*, No. 58. p. 13285.

The Lord Ordinary repelled the objection. But

The Court altered that judgment; and, in respect of the want of confirmation, found the adjudication ineffectual.

Lord Ordinary, *Kennet*. Act. *Rolland*. Alt. *Blair, Morthland*. Clerk, *Home*.  
*S. Fol. Dic. v. 4. p. 268. Fac. Coll. No. 218. p. 344.*