

1789. November 27.

ANNE ARBUTHNOT *against* ARCHIBALD COCKBURN.

MR. COCKBURN, as the general disponee of his father, instituted an action of debt against the representatives of Archibald Allan. The defenders admitted, that the sums had been owing to the pursuer's father; but they contended, that the demand should be restricted, in consequence of certain claims of compensation.

Mr. Cockburn having obtained a decret, proceeded, without being confirmed, to adjudge certain lands which had belonged to Archibald Allan; and this circumstance was urged for excluding him from any share of the price of these subjects.

It was considered in general as a fixed point, that a decret obtained by a nearest in kin or general disponee, was incomplete without a confirmation; 26th February, 1782, Marshall *contra* Watson, (see APPENDIX), 26th November, 1784, Lenox *contra* Grant, No. 22. p. 14381. 28th June, 1785, Creditors of Park *contra* Maxwell, No. 23. p. 14382. The only doubt was, Whether the proceedings in this case importing a judicial acknowledgement of the pursuer's title, were not, with the decret following thereon, to be held as equivalent to a bond of corroboration, so as to supersede the necessity of a confirmation, 19th June, 1782, Watson *contra* Marshall, No. 66. p. 7009. It seemed to be the opinion of most of the judges, that if the defenders in the action had agreed to dispense with the want of a confirmation, the adjudication might have been sustained. But as nothing of this sort appeared,

"The Lords sustained the objection to the adjudication, and found that Mr. Cockburn was not entitled, in virtue thereof, to be ranked on the estate in question."

Reporter, Lord Henderland.

Act. M. Ross.

Alt. Abercromby.

Clerk, Mitchelson.

C.

Fol. Dic. v. 4. p. 269. Fac. Coll. No. 93. p. 169.

No. 24.
Adjudication by a general disponee, without confirmation, ineffectual, although preceded by a decree *in foro*.

SECT. IV.

Special Assignation of Moveables.—Special Legacy.

1664. July 21.

MUIRHEAD *against*

MR. JOHN MUIRHEAD, as assignee, pursuing he alleged, That the assignation not being intimated before the cedent's death, the sum was *in bonis defuncti*, and the assignee could have no right without confirmation.

The Lords repelled the allegation.

Fol. Dic. v. 2. p. 368. Stair, v. 1. p. 223.

No. 25.