

debtor to the defunct; and the Court thought it unnecessary, and indeed anomalous, to oblige a debtor to take decret against himself.

MONBODDO. If possession is held equivalent to confirmation as to *nomina debitorum*, there is an end put to confirmation; for there is nothing easier than for a nearest in kin to take possession, *brevi manu*, of the bills and bonds of the defunct.

KAIMES. It is necessary that there be an *aditio hæreditatis*; that the heir may not be overtaken, or understood to mean to be heir, when he did not. Confirmation is *aditio hæreditatis in mobilibus*. When any one article, however insignificant, is confirmed, it is enough; because such confirmation shows the *animus* of representing.

On the 27th November 1776, "The Lords found that the bills and bonds of the mother did not vest *ipso jure* in the son, and do not belong to the defender, as his son's legal successor; that the sum of L.250, payable at the death of Elizabeth Chalmers, falls to be added to the goods in communion; that the bond for L.30, payable to the widow's fund, is no burden on the goods in communion; and that the window-light duties are not to be deduced from the goods in communion; the pursuers always finding caution to indemnify the defender, if these duties shall be exacted;" adhering to Lord Covington's interlocutor.

*Act.* R. M'Queen. *Alt.* A. Crosbie.

1776. December 4. PROCURATOR-FISCAL of the LYON COURT *against* WILLIAM MURRAY of Touchadam.

#### JURISDICTION OF THE LYON COURT—FEES OF MATRICULATION.

[*Faculty Collection*, VII. 36; *Supp.* V. 490, *Dictionary*, 7656.]

GARDENSTON. As this is an action for recovering penalties, it is necessary that the offence be proved. Mr Murray pleads, on the one side, that the records have not been regularly kept, so that it cannot be said that he is not matriculated; and, on the other side, that he and his predecessors have possessed for ages. Immemorial use establishes right in matters of more consequence than the present subject of debate.

ALVA. In cases of this kind old possession must imply a right. Of this right we have the best evidence that the nature of the thing can admit of.

PRESIDENT. I am no favourer of the jurisdictions which may tend to oppress the subjects. *Here* Mr Murray's plate, equipage, &c., are forfeited, because he had borne arms which his predecessors have borne for 300 years. The Act 1672 is calculated against the usurpers of arms, and it declares that arms once matriculated must not be changed, but must remain the rule of bearings for ever. But I deny that the not being matriculated in the Lyon register implies

a forfeiture. The Lyon was not inclined to carry the law to its utmost rigour, for he neglected to force matriculation. Would it not be strange that his neglect should imply a forfeiture? If immemorial possession is not sufficient here, I know not what can be sufficient? Independent of possession, which implies a grant from the Crown, Mr Murray, as a baron, has right to carry ensigns-armorial: I will therefore presume his right. There is no doubt that, in 1672, the Lyon would have been bound to matriculate this very coat-armorial. Possession, for an additional century, cannot make the right of Mr Murray worse. As to the register, it is of no authority, for it is no complete record. As to the extent of the fees, I have doubts. The Act of Parliament indeed is express, but *practice* may have departed from that rule: the fees however must not be arbitrary.

On the 4th December 1776, "The Lords, in substance, assailed Mr Murray;" adhering to Lord Hailes's interlocutor, (*vide* printed papers,) but remitted to Ordinary as to the article of the extent of fees. 20th December 1776, "adhered."

*Act.* J. Boswell, A. Murray. *Alt.* D. Rae.

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1775, February 4, and 1776, December 10. Dr ALEXANDER JOHNSTONE  
against THE EXECUTORS OF JAMES CRAWFORD.

#### ARBITRATION—FOREIGN.

A foreign Decree-arbitral can be made effectual in Scotland, and is not reducible on account of iniquity or informality.

[*Fac. Coll.*, VII. 327; *App. I. Arbitration*, No. 4.]

COALSTON. It is plain, from the opinion produced, that in Holland decreets-arbitral may be reduced, upon iniquity, within a limited time. If we lay hold of the law of Holland in order to set aside decreets-arbitral, we must take it in all its parts, and with its short prescription. But I see that from the general rule there is an exception of minority.

KAIMES. I doubt whether there is any thing here to stop execution. The money must be paid, upon caution.

PRESIDENT. If the decret-arbitral can be opened, we are not bound to observe all the forms of the courts in Holland. Why should we give more force to this decree than to the decree of any foreign court?

KENNET. I formerly considered this not as a decree but as a contract. That difficulty is now removed. I do not see the necessity of giving way to the forms of Holland in finding caution.

GARDENSTON. That is, we will take no more of the law of Holland than we like. I think that the allowing of execution, upon caution found, is judicious.

KAIMES. A decree of a foreign court is with us no more than a judgment, which may be supported upon equity; but there is a difference between a *de-*