

1789. November 27. Mrs ANNE ARBUTHNOT against ARCHIBALD COCKBURN, Esq.

SERVICE AND CONFIRMATION.

Adjudication by a general disponee, without confirmation, ineffectual although preceded by a decret *in foro*.

[*Fac. Coll. X.* 169 ; *Dict.* 14,383.]

ESK GROVE. In the case of Robert Grant, 1784, the Court decided that a confirmation was absolutely necessary; and many such cases have since occurred and have been determined in the same way. A debtor may save a creditor the expense of confirmation; but if he does not, the creditor must confirm, and, if he fail, it is at his own risk.

JUSTICE-CLERK. Before the Act 1690 there could be no doubt. A general disposition is a good title to pursue, and the debtor may pay; but you cannot compel him to pay unless there be a confirmation; and it follows that you cannot do diligence. Here the debtor did not object indeed, but neither did he make any judicial agreement to dispense with confirmation.

MONBODDO. The second decret was taken after the parties were heard;—this is equivalent to consent.

PRESIDENT. The debt was admitted to be just, but that is not enough. It was not admitted that decret might be taken without confirmation.

On the 27th November 1789, “The Lords sustained the general objection moved by Mrs Anne Arbuthnot, and found it not necessary to determine the special objections.”

For Mr Cockburn, A. Abercrombie. *Alt.* M. Ross.

*Reporter*, Henderland.

*Diss.* Monboddo.

1789, December 8, 1790; February 9. Mrs ELIZABETH CHALMERS against Mrs HELEN DOUGLASS and JAMES BAILIE, her HUSBAND.

HUSBAND AND WIFE.

No execution against a wife's person for a debt *ex delicto*, incurred during the marriage. Nor is the husband liable, or the goods in communion on that ground. But, for the expenses awarded to the pursuer, the husband is liable as *dominus litis*.

[*Fac. Coll. X.* 223 ; *Dictionary*, 6083.]

1789. December 8.—JUSTICE-CLERK. There are cases where a husband is