

1793. *January 22.*GEORGE ROSS, and OTHERS, *against* SARAH AGLIANBY.

No 5.

Deeds of settlement containing a nomination of executors, having been reduced by the Court of Session, the nearest in kin may get themselves confirmed during the dependence of an appeal against the decree of reduction, to the effect of vesting a title in themselves from the date of the confirmation, in case the judgment should be affirmed.

GEORGE ROSS and Others applied to the Commissary of Dumfries to be decerned executors-dative, *qua* nearest in kin, to the late Richard Lowthian.

Sarah Aglianby, Mr Lowthian's widow, stated objections to the edict, founded on certain deeds, in which she was named his executor. These deeds, she admitted, had been reduced by the Court of Session; but she contended, that, as she had entered an appeal against their judgment, no person ought to be confirmed during its dependence.

The Commissary accordingly 'delayed giving any decision in the edict till discussing of said appeal.'

The LORD ORDINARY refused a bill of advocacion complaining of this judgment.

The nearest in kin presented a reclaiming petition, stating, that as one of their number was 76 years of age, and in a valetudinary state of health, there was much reason to apprehend, that any delay of the confirmation might have the effect of altering the course of succession. And that, although the service of the writ of appeal must no doubt stop the execution of the decree of reduction, yet it could not restore the deeds reduced, which were *in hoc statu* to be considered as nonentities, and therefore they could not operate as a bar to the confirmation. 19th July 1770, Lyon and assignee against Lady Kinnaid, No 2. p. 580.; Wallace, 2d July 1774, Heron against Heron, *voce* INHIBITION.

Observed on the Bench: The petitioners ought to be allowed to proceed in completing their titles, to the effect of vesting the right, and enabling them to transmit it to their own nearest in kin, if they should happen to die in the mean time.

The Court granted the prayer of the petition, for the purpose of vesting a title, upon the petitioners agreeing not to intromit till the appeal should be discussed.

Lord Ordinary, *Dunsinnan*. For the Petitioners, *Geo. Fergusson*. Clerk, *Menzies*.
Davidson. *Fol. Dic. v. 3. p. 31. Fac. Col. No. 14. p. 31.*

See Kennedy against Cumming, Forbes, p. 532. *voce* SUMMAR APPLICATION.

See Kennedy against Cumming, Forbes, p. 604. and 629. *voce* MEMBER OF PARLIAMENT.

See Home Campbell, Supplicant, Rem. Dec. v. 2. p. 72. *voce* SUMMAR APPLICATION.

See Baynes against Graham, 16th February 1796, Fac. Col. No 203. p. 485. *voce* COMPETITION.