

of this Testament in the Commissariat of Glasgow by an Executor Creditor, was preferred to the testaments Confirmation before the Commissaries of Edinburgh in respect that the decedent had left his wife and family in Glasgow whose bread he was prosecuting his former trade of a Merchant, till the good Notice of his death 22 Feb. 1711 Henry contra Galskells and his factor. Because a Mans habitation is not changed by taking up a Resolution to settle abroad, till he be detested fixed and resolved to continue there. Testaments of Soldiers men residing and dying abroad in a foreign Country, ought to be confirmed by the Commissaries of Edinburgh 18 July 1666 Brown and Duff contra Dixet Stair ibid. M. d. n. s. off. on Act 29 Pars 6 Jo 1. Testaments of Mount-bands, Strollers and Common soldiers, fell to be confirmed in the place where they die, if they had settled there for a year before Stair ibid. But otherwise they to be confirmed by the Commissaries of Edinburgh. Thus it was found that the Testament of a Soldier dying without any Claim had in Glasgow, where he belonged to lay at the time and had lain 60 days before, ought to be confirmed by the Commissaries of Edinburgh inquam Commune foris unless the Decedent had settled at Glasgow 40 days immediately preceding his death 16 Feb. 1711 Nisbet and Bell contra Monro. Confirmation in London of an executor nominate there without any special Inventory given up, was sustained to afford relief in Scotland; the pursuer proving it to be the Custom of England to confirm testaments in that manner 16 Feb. 1627 Sanson contra Kelso. But a Man having taken his Testament made in Scotland to England with him when he died, and left several Legacies, and the executor nominate having confirmed the Testament in the prerogative court of Canterbury without any Inventory given up or contained in the Testament. In an action for payment of the Legacies, process was not sustained upon the Testament so confirmed in England, but the Legacies should be confirmed a Testament in Scotland being the executor nominate appeared and Renounced the office of Executor 25 Feb. 1637 Robt contra French. An Executor Dative confirmed in Scotland was preferred to the Executor nominate whose nomination was approved in the prerogative Court of Canterbury in England, upon the former finding

Caution to Rejoind to the latter in case the Dative should be Revived Spots wood prol. Tit. Testaments 15 January 1629 Sanson contra Kelso.

The heir hath right to the Moveable heirship of a Widow to her legal share, and Children to their legitime parts, sure by Decree of the predecessor husband or father; and transmit their respective interest by their death, to their own nearest of kin without Confirmation; 28 Novemb. 1674 Her contra Her 12 Feb. 1662 Bell contra W. Chie 14 Feb. 1677 D. & D. Chieff Bueclough contra E. Guedate 2 Decem. 1687 Ryffel and his Children contra Brown 17 July 1688 Maxwell and Hamilton contra Colquhoun Bonlawick Stair 28 Feb. 1677 Feb. 8 550 M. d. n. s. Jud. lib. 3 Feb. 9 511. Because these are not Rights by Succession, but Rights by Devision of the Moveable Competent to the Decedent and his Children proper sure on the death of the husband or father, from which they cannot be excluded by Testament or any deed on Sea or Land. But the nearest of kin of wife or heirs to decaying, must be confirmed Executors to them, so as to act in their own person, the legal share belonging to the Decedent 17 Feb. 1668 Forsyth contra Paton Stair ibid. 551 Infants 28 Feb. 1668 And the Decedent part who their falling to Children or to other nearest of kin falling Children is not established in them by their surviving the Decedent, but only by Confirmation. Nor have any nearest of kin interest therein Except such as are alive the time of the Confirmation, and for whom there is no Mobilium et Imobilia by the Executor. So that if they die without Confirmation, their interest dies with them, and does not pass to their Executors 17 Feb. 1668 Forsyth contra Paton 14 Feb. 1677 D. & D. Chieff Bueclough contra E. Guedate. There being no Representation in Moveables as to the Decedent part, Stair ibid. 551 M. d. n. s. Jud. lib. 3 Feb. 9 511 Otherwise Act 14 Pars 22 Feb. which goes by Succession and Confirmation. Such as the heirs of a Mobilium is no less necessary to transmit the nearest of kin right than the entry of an heir is necessary for transmitting the Inheritance to his Representatives. As without Confirmation they could not be passive liable to pay the debts of the Decedent, so neither can they have any active title without it, tho' of no Moment to object that some of the nearest of kin may die before they can confirm, in which case it might seem hard to exclude their Children. For that is an extraordinary Contingency which laws regard not; and they may immediately after their friends death obtain Confirmation, if they be not negligent. But the nearest of kin dying after Confirmation of the Testament, tho' before it be executed, transmit their nearest of kin their nearest