

but the intromission is committed to the other, who uses solely to be confirmed, and uses not to be done after they are confirmed, but yet it was sustained here after the confirmation.

No 73.

Act. ———.

Alt. *Aiton.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 277. Durie, p. 451.*

1634. July 8.

DAME MARGARET PRESTON *against* The EXECUTORS of her SON.

DAME MARGARET PRESTON pursuing the executors of umquhile John Hepburn her son, to warrant her from a debt decerned against her as executrix to her umquhile husband, Sir Robert Hepburn, and whereof the said umquhile John Hepburn should have relieved her said husband his father, the defender *alleging*, That the whole goods of the testament of the said umquhile John were exhausted, by sentences obtained by other creditors of the defunct's against them; this allegiance was repelled, and it was not found sufficient to liberate the executors, that sentences were obtained by other creditors against them, for as much as would exhaust the inventory of the testament, except also that payment had been made by the saids executors to the creditors, conform to their decreets; for, before payment the executors could not be exonered, and when this pursuer had recovered sentence, as the other creditors have done, the executors might convene them, or suspend all their sentences; in which process the creditors might dispute upon their preference, if there was not enough to pay them all, and then the executors could not be obliged, but *secundum vires inventarii*.

No 74.
Every creditor may take decree against an executor, and the defence of exhaustion will be reserved *contra executionem*.

Act. *Stuart.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. 1. p. 276. Durie, p. 724.*

1665. January 25.

WILLIAM MENZIES *against* LAIRD of DRUM.

WILLIAM MENZIES, as executor to Alexander Menzies, and umquhile Margaret Gordon the other executor; having obtained decree against the Laird of Drum, for 8000 merks, the said Margaret being dead, William charges for the whole: Margaret having died at the horn, compearance is made for the donatar. It was *alleged* for Drum, that he could not be convened at the instance of this pursuer, without concurrence of the other executor, or some to represent her, had been called; for they might have *alleged*, that this charger is satisfied of the half of his executry.

No 75.
Two executors obtained decree against a debtor of the defunct; one of the executors died, and the other having charged for the whole debt, the Lords sustained the charge. See No 78. p. 3884.