

## CREDITORS OF A DEFUNCT.

### SECT. I.

#### Decisions upon Act 24th, Parliament 1661.

1664. July 3.

TOWN of EDINBURGH *against* LORD LEY and WILLIAM VEITCH.

**I**N a double pouding, raised by the Town of Edinburgh against my Lord Ley on the one part, and William Veitch upon the other; the ground whereof was this; the Town of Edinburgh being debtor to umquhile Douglas of Morton, in a sum of money, his son confirmed himself executor to his father, and confirmed this sum, which was arrested in the Town's hands by William Veitch first, and thereafter by my Lord Ley.—It was *alleged* for William Veitch, That he ought to be preferred, having used the first diligence by arresting, several years before my Lord Ley; and having obtained decret against the Town before the Commissaries; but before it was extracted, my Lord Ley obtained advocacion.—It was *alleged* for my Lord Ley, That he ought to be preferred, because the sum arrested being due to umquhile Douglas of Morton, there was never a decret obtained at the instance of this executor, establishing it in his person; and therefore this competition being betwixt William Veitch, who was only the executor's proper creditor, and not the defunct's creditor, the defunct's money ought to be applied first to pay the defunct's debt, before the executor's debt, albeit the executor's own creditor had done the first diligence.

THE LORDS found, That the Lord Ley, as being creditor to the defunct, ought first to be preferred, seeing now he appears before the debt was established in the person of the executor.

*Fol. Dic. v. 1. p. 206. Stair, v. 1. p. 210.*

#### No 1.

The Lords preferred the creditors of a defunct, before the creditors of his executor, as to all the defunct's moveables that were extant, though the act statutes solely with respect to the heritable estate.