

ceased Earl of Seaforth, as being cautioner for him, and distressed, pursues for delivery of his moveables.

The Countess of Seaforth, having confirmed herself executrix-creditrix, also compears, and ALLEGES, She ought to be preferred ; because Suddie, not having paid the sums in which he was engaged cautioner, as he could not have poinded the Earl's goods unless he had paid, so neither can he claim the same goods as executor-creditor : otherwise the debt might be satisfied by the Earl's goods, and yet the Earl not liberated of the debt, but put to an action against his cautioner to purchase him a discharge ; whereas the Countess hath confirmed upon most privileged debts, such as the Earl's funeral expenses, to which she was assigned.

It was ANSWERED, That Suddie, having the first confirmation, which is a decret of the commissaries standing unreduced, there is no place for the Countess her posterior confirmation for the same goods ; but Suddie would have the sole administration, though he had been a mere executor-dative. *2do.* He offers, before he extract, to produce a discharge, from the Earl's creditors, to his successors, of the equivalent sum.

The Lords preferred Suddie to the administration, he producing a discharge before he extract ; but allowed the lady to be heard upon the funeral charges, which is a preferable debt to all others, not as executor, but as a creditor.

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1681. *February 9.* SIR JAMES COCKBURN *against* The LADY CRUMSTAIN.

THE Lady Crumstain having pursued a declarator against Sir James Cockburn, which being disputed in the Outer House, and the Ordinary having ordained some writs alleged upon to be produced before answer ;—which being now produced, the Ordinary having called the cause again,—

It was ALLEGED for Sir James, That writs being produced upon an act, the Ordinary could not determine thereon, but only the Lords *in præsentia*.

It was ANSWERED, That here was no act of litiscontestation, nor an act before answer equivalent thereto, but only a warrant to produce writs which were in the parties' hands, that an allegiance might be founded thereupon, according to the tenor of the writs.

The Lords found, That this being no act of litiscontestation, or equivalent thereto, the Ordinary ought to hear the parties upon the writs produced.

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1681. *February 9.* GEORGE COCKBURN *against* WEEMS.

GEORGE Cockburn having obtained a gift, of the King, of the cocket-office, empowering him to give cockets to all ships loosing in Fife ; there arose a competition betwixt this gift and a prior gift given by the Exchequer, of the same of-