

ruption ; because in that case law requires only some document that the action pretended to be pursued was not neglected.

Fol. Dic. v. 1. p. 277. Forbes, p. 19.

No 83.

1744. December 18.

DIN against BLAIR.

EXECUTORS are liable to diligence for the subject of the inventory confirmed ; but are not liable for their omission in not confirming, in respect every party having interest may confirm *ad omissa*.

And accordingly, in the process at the instance of John Din, in the right of Anne Blair his wife, as one of more nearest of kin of James Blair her father, against John Blair son and executor nominate of the said James, to account for his wife's share of her father's moveables, and that not only to the extent of the inventory confirmed by him, but to the full extent of the effects known to the executor to have belonged to the defunct, which it was insisted he was, by the trust conferred on him, bound to have confirmed ; especially in this case, where, by a special clause in the nomination, all other executors were debarred, the LORDS found the defender only liable for what he had confirmed or intromitted with ; for even such debarring clause was not understood to preclude the nearest of kin from confirming *ad omissa*.

Fol. Dic. v. 3. p. 192. Kilkerran, (EXECUTOR.) No 8. p. 174.

* * See This case by D. Falconer, No 36. p. 3501.

* * See Bell against Wilkie, voce NEAREST OF KIN.

No 84.

Executors are liable to diligence for the subject of the inventory confirmed ; but are not liable for their omission in not confirming.

S E C T. IX.

In how far, and by what means, the executor is constituted proprietor.

1665. July.

COLVIL against LORD BALMERINO.

MR JOHN COLVIL, as executor to Mr John Colvil, his uncle, minister at Kirk Newton, pursues my Lord Balmerino for the stipend of the said kirk, crop 1663, the defunct having died in February that year, and also for the profit of the glebe that year.—It was *alleged*, That Balmerino had *bona fide* paid it to the intransit minister, who was presented to that year's stipend.—It was *answered*, That he could not have been legally presented thereto, it having belonged to

No 85.

A party had paid to the intransit minister a sum claimed as ann by the nearest in kin of the defunct incumbent. Found, that the nearest in kin might