

Elleis's pursuit;—this was found relevant, and the payment made by her allowed, and the Laird of Dalmahoy preferred; albeit Patrick Elleis *replied*, That he ought to be preferred, or at least should come in with other creditors to be equally answered, seeing he was anterior in diligence, and during his dependence by favour of the relict, she had given way to her good-son's process, who had intented this action since he had cited her, and had kept his process in her procurator's hands, while the other had passed through his decret by collusion betwixt them; which fraud ought not to be sustained. This reply was repelled, and the creditor, posterior in diligence as said is, was preferred.

Act. *Learmonth.*Alt. *Belshes.**Fol. Dic. v. 2. p. 45. Durie, p. 365.*

No 194.

1629. March 5. ARCHIBALD THOMSON against The LAIRD OF RENTON.

ARCHIBALD THOMSON convened the Laird of Renton, as universal intromitter with the goods and gear of William Douglas of Ively, to hear and see a bond granted by William to the pursuer, registrated against him as intromitter fore-said. *Alleged* by him, He could not be convened as intromitter, because there was one decerned executor ~~dativ~~ to William, which executor disponed the said goods to him. *Replied*, Not relevant, unless he would say, there was an executor confirmed before the intending of this cause, who disponed the same to him; for there is no right that any man can have to intromit with the goods of a defunct, except by a confirmed testament. *Duplied*, No necessity, because the executor being decerned, he behoved to take a time before he confirmed, till he knew what goods and gear were to be confirmed; and being now confirmed, albeit after the intending of the pursuer's cause, it must liberate the defender of his intromission, which was by the executor's warrant.—THE LORDS found the exception and duply relevant; for it is lawful to an executor decerned to confirm at any time before year and day expire, and to purge his former intromission thereby, although there were never so many pursuits intented against him before his confirmation.

Fol. Dic. v. 2. p. 45. Spottiswood, (EXECUTOR.) p. 120.

No 195.

Found in conformity with
No 193. P.
9866.

1630. November 25. MINIMAN against RAMSAY.

WILLIAM MINIMAN pursuing David Tindale and Elizabeth Ramsay, as executors or intromitters with the goods of John Fullerton, burges of Dundee, his debtor, to pay him his debt, Tindale *alleging*, That he could not be pursued as intromitter, because Ramsay, the other defender called, was executor.

No 196.

Found in conformity with
No 194. P.
9868.