

C O N F U S I O .

1610. July 20. JOHNSTON *against* IRELAND.

HE who had sums of money to crave of a defunct, falling heir to him, may not the less pursue the defunct's executors for that debt, which is not confirmed nor taken away by the creditor's becoming heir to his debtor.

Fol. Dic. v. 1. p. 195. Haddington, MS. v. 2. No 1978.

No 1.

1630. March 18. DR HAIRT *against* PATRICK his Brother.

If a creditor fall to be executor to the debtor, there can be no action at the creditor's instance against the heir for that debt; because both creditor and defender are confounded in one person.

Fol. Dic. v. 1. p. 195. Auchinleck, MS. p. 75.

No 2.

1630. March 18. DALGARNO *against* FORBES of Byth.

AN executor may not take an assignation to the defunct's debts, and make assignation thereof to another person, to the effect the assignee may pursue the heir; for the debt being confounded in the person of the executor, who should have paid the same, he might not assign the same to another.

Fol. Dic. v. 1. p. 195. Auchinleck, MS. p. 75.

No 3.

* * Durie reports the same case :

A WOMAN being made assignee by her own son Patrick Dalgarno, to certain debts addebted by umquhile Forbes of Byth, her own son also by another marriage, to divers his creditors, which creditors had made the said Patrick Dalgarno her cedent, assignee thereto; and she pursuing registration of these bonds against the heir of the said umquhile Forbes of Byth debtor thereof, wherein the defender compearing, this defence was found relevant by the Lords, to stop the registration against the heir of the defunct, at the instance of this assignee constitute by the son, who was made assignee by the creditors, because it was offered to be proven, that the assignee Dalgarno was executor decerned to the defunct debtor; which defunct's testament being confirmed, the