

TITLE TO PURSUE.

No. 62.
cur in pursuing and discharging?

It was the unanimous opinion of the Court, that co-executors must all concur in pursuing or discharging, because they have but one office, are one body, and represent the defunct as one person; and therefore, any one making payment to a co-executor, without concurrence of the rest, does it at his peril. It is true, the danger is not great where the co-executors are nearest of kin, who have an equal interest, in case the payment do not exceed the co-executor's share; but the case of co-executor creditors is different; a voluntary payment to one of them will be sustained or not, according as the person receiving payment shall in the event be found entitled to the extent of the sum he receives.

Kilkerran, (EXECUTOR) No. 3. p. 171.

1739. January 23. KEITH against LORD BRACO.

No. 63.

An adjudication proceeding upon a charge to enter heir, though no infestment had followed on it, found a good title in a reduction and improbation to force production of all writs flowing from the person to whom the party was charged to enter, or from his predecessors; but not to force production of writs flowing from the authors of said person or of their predecessors, unless the pursuer should first condescend upon such authors, and give reasonable evidence that they were his authors.

Kilkerran, (TITLE TO PURSUE) No. 1. p. 578.

1739. November 2. GRAHAMS against WILSON.

No. 64.

A precept of *clare constat* is a sufficient title to pursue, where neither the grantor is refused to be superior, nor the receiver to be heir upon a colourable ground.

Kilkerran, (PRECEPT OF CLARE CONSTAT) No. 1. p. 413.

1740. February 19. SPRUEL against SPRUEL CRAWFORD.

No. 65.
General service to an apparent heir, against whom an adjudication was led, a sufficient title to quarrel the adjudication.

Where an adjudication proceeds against an apparent heir upon a special charge, the next heir needs no other title to quarrel the adjudication than a general service to the former apparent heir, against whom the adjudication was led: And of this there is no doubt, so far as concerns his title to quarrel the decree of constitution, being himself liable to the debt in the decree, by his service to the person against whom it was obtained. But it was not so clear, that supposing no objection to lie to the decree of constitution, he could quarrel the adjudication upon nullities, until he served in special to the person last infest in the lands.