

THE LORDS, 8th June 1745, found, that in the circumstances of this case the payments made by the defender behaved to be admitted in exhausting the inventory ; and, on a bill and answers, adhered.

No 47.

Reporter, *Arniston.* Act. *Lockhart & Williamson.* Alt. *Balfour* Clerk, *Gibson.*  
*Fol. Dic. v. 3. p. 191. D. Falconer, v. 1. No 109, p. 129.*

1748. December 19.

ELIZABETH and MARY ARBUTHNOTS *against* ARBUTHNOT.

No 48.

IN a process at the instance of Elizabeth and Mary Arbuthnots against their brother the executor, for payment of their bonds of provision, he offered to assign as many of the bonds contained in the inventory of the testament as would answer their provisions.

But THE LORDS found, ' that a creditor is not bound to accept of an assignation from an executor.'

*Fol. Dic. v. 3. p. 191. Kilkerran, (EXECUTOR) No 10, p. 176.*

1781. November 28. BENJAMIN BELL *against* WILLIAM CAMPBELL.

UPON the death of Bryce Blair, his relict was decerned executrix, for behoof of herself and the younger children. In that character, she brought an action against Richard Thomson, for payment of a debt due by his predecessor to her husband ; and afterwards assigned this claim to William Campbell, in payment of an account owing to him by George Blair, the eldest son and heir of Bryce ; and by William Blair, the second son, as representing his deceased brother.

Posterior to the date of this assignation, Benjamin Bell raised a process against the executrix for relief of certain debts in which his grandfather had been bound as cautioner for Bryce Blair, and for which he was now distressed ; and upon this dependence, laid an arrestment in the hands of Richard Thomson. In a multiple-pounding at Thomson's instance,

*Pleaded* for the arrester ; An executor is no more than a trustee or administrator for those interested in the executry. Confirmation does not vest the property in his person. He cannot compete with a creditor of the defunct attaching any part of the estate ; neither can he, by assignation, give a preference to any particular creditor ; *Erskine, b. 3. tit 9. § 42.* Upon the same principle the executry estate, while *in medio*, cannot be attached for the debts of the executor, but remains open to the creditors of the defunct, who have been preferred, even without diligence, upon a simple statement of their interest ; 12th February 1779, *John Tait contra David Kay, No 21, p. 3142.*

No 49.

An executor cannot give a preference by assignation to any particular creditor.