Act 26 Sess. 2 Parl. W. & M. Yet a Confirmed testament wh
the Nearest of kin were surrogate to the procurator fiscal
deceased executor for their behoof according to the state Retain
in Inferior Commissariots, the Nol by the Commissaries of E
=burgh was sustained 23 July 1707 Alison contra Children
of Pitcullo. being in that case the Fiscal was not Decerned u
a Charge given to the Nearest of kin, which the law forbeds.

Testaments of those who die intestate, or whose executor
Nominate declines to Confirm, are Now Made up and Compli
by Confirmation either 1° at the Instance of their Relicts, an
Children, or other Nearest of kin. Or 2° At the Instance of Cr
ditors of the Deceased. Or 3° At the Suit of Creditors of the
Nearest of kin or 4° At the Instance of factors Appointed by t
lords of Session.

Sect. 1.

Confirmation at the Instance of Executors Testamen

An Executor Nominate or testamentary needs not to fora
an Edict, or to seek a Citatione Decerning him executor, but ga
up the testament with an Inventory of the goods and gear o
the Deceased to the proper Commissary, and a bond of Cautio
=ry to make the same forth comming to all parties having Inter
as Law will. Which Testament and Inventory the Commissa
without more Ado Relieves Approves and Confirms, and Imponer
the executor to Intromet with uplift Receive Dispose of
pursue for the Goods and gear therein set down, and to gra
Discharges upon Receipt or payment. This is what we ca
a Confirmed Testament Testamentary.

Persons to whom General Dispositions omnium
Bonorum are Granted, make up their titles by Confirmatio
in the same Manner as Executors Testamentary. For th
a General assignation omnium Bonorum be a sufficie
title to Retain Moveables in the assignays Custody, witho
Necessity of Confirmation in a Competition with a Cre
having no right or no complete right to the subject, as a
Executor Decerned who has only a License to pursue
and has not Confirmed 22 Novemb. 1711 Dickson contra
Logan. It would not be good against an Executor Comp
=ned, nor would it afford Action for Recovering the goo
from a third party in possession. For being an Expres
law was thought necessary to Declare special assignati
not Intimated or Made publick in the Bedents lifetim
good and Valid Rights to Relief pursue or defend witho
Confirmation Act 26 Sess. 2 Parl. W. & M. That implies by
Argument a Contrario, that a General assignation is
no title to Defend or pursue, casus omissus being he
pr

pro Omisso. And if a General assignation were a sufficient
right, the Means and estates of persons might be hurried up
to the prejudice of Creditors. Confirmation was found necess
=ary of a wifes share of the Goods belonging to her husband
and her Relict the Disponee to him all that she should
have the time of her death, which General Disposition was
found effectual only without Confirmation, in so far as it
imported a Discharge to the husband of his obligation to imply
the Tocher on security, whereof the one half was to Return to
her heirs failing Children 25 July 1696 Procurator Fiscal
of the Commissariat of Glasgow contra Whyte.

In England one who succeeds to the Moveables of a
person deceased by his Appointment in his last will and
testament stormed as with us Executor, who ought to make
an Inventory i.e. A schedule containing a true and perfect
Discription of All the goods and Chattels of the Deceased
at the time of his death with their Prices and of all debts
due to him, which must be exhibited to the Bishop of the
Diocese where the party died or to the Ecclesiastick Deliga
=tes by him, if all the goods be there; or to the judge of a
peculiar Jurisdiction if they lye there; or to the Arch
Bishop of the province or to his Delegate if they be in
his peculiars within the same Diocese; or to the Arch
Bishop of Canterbury or his delegate by prerogative, if the
goods are dispersed in diverse Diocies, and there be notabilia
Bona i.e. to the value of 5 pound sterling out of the Diocese
where the testator died. And before the proper Ordinary or his
Judge delegate or Judge of the peculiar Jurisdiction res
pectively, as aforesaid, the Executor must prove the will
either in Common form by his own Oath swearing upon
his Belief that the testament given up by him is the last
will and testament of the Deceased or by Witnesses besides
his own Oath to Confirm the same, when he is called to do
it by any having Interest in the Goods of the Deceased, or
hath summoned them to see the will proved for Obviating
Dispute about the goods. The will being proved is Exhibi
=ted in the office belonging to the Ecclesiastical court to
be kept by the Register, and a Copy thereof in Parliament
under the ordinary seal, Called the probate of the testa
=ment 21 Geo. 3 Cap. 5. Which answers to our Confirmation
is to be Delivered to the Executor.

Sect. 2.