Sect. 2.

Confirmation of the Moveables of an Intestate at the Instance of his Relict or Children or other Nearest of Kin.

The Relict or Children or other Nearest of kin of an Intestate, cannot now (as before the Year 1690) be Charged pursued or Required at the Instance of the Commissary or his Officials to give up Inventory of the Moveables of their Deceased friend in order to Confirmation Act 26 Sess. 2 Parl. K. W. & M. But it is often Necessary for Children or other Nearest of kin to Confirm, because the dead's part falling to them is not established in their person by their Surviving the Deceased, without Confirmation; And only such Nearest of kin have Interest therein, as are alive at the time of the Confirmation; there being no Representation in this case. When the Nearest of kin Desire to Confirm an Edict will be Emitted Served and Affixed on the church Door where the Intestate Died, upon Nine Days Warning to all parties having Interest to Confirm. The Execution of which Edict Served by the Commissary Officer must have Witnesses Subscribing to it otherways it is Null 24 January 1711 Moir & Morison contra Dons. For the Law (Act 4 Sess. 2 Parl. K. W.) ordains Execution of All Citations in use to be in writ without Dilation of personal and edictal to be Subscribed by the Executer and the Witnesses; And Edictal Citations do the rather Require the Subscription of Witnesses, because No person being to Receive a Copy, the officer hath the more power and trust Upon the Ninth Day after Serving the Edict, if no person Appear having a just objection Against the Applyers interest they will be Decerned Executors. Which Decreet is called a Dative, and the person or persons decerned are Stiled Executor or Executors Dative qua Nearest of kin. Nearest of Kin was preferred to the office of Executor, in a Competition with the Relict of the Deceased, who had a General Disposition Omnium Bonorum belonging to him with the burden of Debts 2 January 1708 Leol of Harden contra Lady Harden. Because Commissaries never Confirm a General Assignee qua executor Nominat, but only qua executor Creditor and Creditors are never Admitted where the Nearest of kin offer to Confirm. One of two Daughters having Accepted of a locker in satisfaction of her portion Natural and what she might succeed to by her Father's death, and the other having got a locker with a Child to

(2) Same as Letters of Administration in England

to be also a bairn in the house: the latter was preferred to the office of Executrix to the father 27 January 1680 Sandylands contra Sandylands.

So to the end they may the better know the extent of the effects of the Deceased, in order to Confirm, they may Sist the Intromitters therewith or others Supposed to know the same, before the Commissary court to give up Inventory thereof upon oath. In which Summons there is a Conclusion of payment; but the pursuer cannot Insist for payment till he Confirm, or have a Licence to pursue Stair Lib. 3 Tit. 8 § 555. After such Capsication, if the executor or executors Active think it expedient to Confirm, they give up Inventory and Swear the same and find Caution to make forth coming to all Concerned, Kings Instructions Orders in conformation. But this is only an Oath of Credulity, and doth not hinder the executor to be Sworn after wards upon omissa or male Appreciata, nor Exclude proof of Super intromissions against him. Which Inventory in time of Prelacy consisted of three parts to Wit. 1° Goods and Gear properly belonging to the Deceased. 2° Debts owing to him. 3° Debts owing by him; which were Inserted for Determining the Quantity of the Bishop's Dues that was payable only out of the free Gear Act 19 Parl. 2 Sess. 1 Ch. 2. But now since Quots of Testaments were Discharged Act 14 Sess. 9 Parl. K. W. the Inventory Consists only of two parts Viz. 1° Goods and Gear or Specifick things. 2° Sums of Money lying by the Deceased, and Debts owing to him. The Totall is then drawn up, and either divided or left Undivided according to the Condition and the Estate of the Intestate at his death. For if the Debts owing by him exceeds his goods and gear there is no place for a Division. If there be an over plus of free Gear, that is Divided into one, three or two parts, according as the Deceased had not, or had a wife and Children, or Wanted Either of these, at his death. Which the Commissary Interposeth his Authority, and Authorizeth the executor to Act and Intromit with the Goods. This is called a Confirmed Testament Dative. If the Commissary by error or Mistake, divide the Goods otherways than Law allows, none except those Cited to the Confirmation and Appearing are

(1) Now Called Service to an Administration in England