

© Writers on Executors & Executors for the goods of a Testator not a Trustee when must they be confirmed? See the words in case on well & must see case St. Dunstons Church v. Mearns of 1711 & 1712

are wronged thereby. For others may notwithstanding Summarily  
 damn their Share without Rescuing the Confirmation 27 Feb. 16  
 Robt contra Hellic. But if after the rights got from the pre-  
 summary process for trial before fact, the executor deemed expedient  
 not to find his account in Confirming, he may Renounce and pass  
 from the office and thereby make way for Creditors to apply for  
 the Key of the Kingdom of England, whose one Deed is to take, & where  
 the Executor Refuseth to promote the Deed, the Management of  
 the goods and Chattels is Committed by the Ordinary or others  
 who grant probats of wills by letters of Administration with  
 the ordinary seal to such persons as the Law Directs, who is called  
 Administrator, upon this giving bond with Sureties for his  
 Management to the judicial Trial Judge from whom he derives  
 his Authority 21 Hen. 8 Cap. 5. 22 & 23 Hen. 2 Cap. 10. finet.  
 1 Jac. 2 cap. 17. When the Executor of the will, the Ordine be  
 thereof disposed of the Will in England is to grant Administra-  
 tion with the seal annexed to the Residuary Legatee professing  
 to the great of Sir, Inrich, M Testaments part 633.

Sect. 3.

Confirmational the place of Creditors of the  
 Intestate.

Creditors of persons Deceased, have two ways of making  
 up titles to their Debtors effects, and Recovering payment of  
 a party having a depending cause or claim against one De-  
 ceased, may, if the pleases, charge his Treasures of him to Confirm  
 be liable as a Debtor Intestate matter: And if he Renounce or  
 get may proceed to have his debt Consoluted, and the Residue  
 of the same declared liable by a Special Cognitioned  
 Cause. Upon which the Debtor may be Deceased Executor  
 Deceased, and so affect his moveables in the  
 Common form Act 41 Sep. 6. Parl. J. W. 21. Creditors of the  
 Deceased whose debts are Inscribed by writ, may directly up  
 an Orit send get themselves Deceased Executors and Creditors  
 and those whose debts are not so Inscribed, may be  
 pursuing a Consolution thereof, and obtaining a Special  
 Cognitioned cause against the Heirs of Sir, be Deceased  
 Executors Creditors. But debts so Inscribed may be granted  
 afterward, as if no such Deed had been obtained, they  
 Summary Cognitioned being used rather for late fashion of  
 the Common Law Consolutes, and Commodum Curie, the  
 for any Legall effect they have. Nor are they other way  
 necessary for Confirmation of one as Executor Creditors

Creditor to his Debtors heir and Executor without a previous  
 Deed of Constitution against him was sustained at Decemb.  
 1705 Dick contra Bowie and others. One Deceased Executor Creditor  
 may upon the Deed of Deceased pursue all persons supposed  
 to have or know of their Debtors effects, to give up possession  
 thereof upon oath and then according as they see convenient  
 Confirm either the whole goods and gear of their Debtor  
 or only so much thereof as may pay themselves. And of Dec. 14  
 Novemb. 1679. That they be not Unnecessarily Intangled in the  
 Execution of his Debts beyond their own Satisfaction. One  
 having Resigned a sum assigned to him by his Debtor Deceased  
 was allowed there after to forfeit his right which he thought  
 liable to Reduction, by Confirming the Money, as Executor  
 Creditor to the Deceased 22 Decemb. 1709 Henry contra Gaspeels  
 & Coning. Yet a person who Intromitted with the goods of one  
 Deceased by Virtue of singular Insufficient titles being pur-  
 sued at the Instance of a Creditor of the Deceased, was not allowed  
 to affect the Subject of her Intromission pendente lite by Con-  
 firmation to the pursuers prejudice 23 Julij 1713 Black contra  
 Lindsay.

That some Creditors might not by precipitate Diligence  
 or better Information get the Start of others, and Confirm  
 themselves Executors Creditors to the prejudice of those who  
 by residing at a far distance, or being out of the Country or  
 other ways, came not so soon to know of the Common Debtors  
 death: It who Confirm themselves Executors Creditors within  
 6 Months of the Debtors Deceased, Come in pari passu  
 without respect to the priority or posteriority of their Diligence  
 and a Creditor posterior in Diligence, may within  
 that time get himself joined to the Executor Creditor  
 first Deceased and Confirmed, upon bearing a proportion-  
 able part of the Charges awarded by the said Executor  
 Creditor, Act of Dec. 2 & 3 Feb. 1688. An Executor Creditor  
 for a life rent Annuity being pursued by another Creditor for  
 payment of a Debt due to him within 6 Months of the Common  
 Debtors Deceased: It was found, that the Inventory of the testa-  
 ment ought to be Divided proportionably betwixt them as  
 follows. Viz. that the first to be Reduced as a Creditor in  
 a principal sum should be able to her life rent Annuity, and  
 the other Creditor in the Debt due to him at the time  
 of the Confirmations. Again, the life rent was found to  
 have right to Retain her proportionable Share of the  
 given