

Inventory, to be dated to her at the Date of the Confirmation as a principal sum bearing Annual rent and the Annual rent thereof to be computed in satisfaction of the Annual rent of so much of the principal sum corresponding to the life rent annuity, and to find Caution to be made for the same from the Estates of her husband or other Creditors, or the other Executor, or the other Representative to affect or retain the same for the Fulfillment of her husband's provision at her death in proportion to what shall be found due to the other Executors as Records. And the life rent was found liable to the other Executor for his proportion, without prejudice to him. Restrict her Executor on the execution in so far as she had any other or possess any separate estate or Effects belonging to the Decedent 4 Decemb. 1713 Co. Lane. v. Erskine contra. Aikenhead. The above once found that different Executors Executors one after another might not only confirm different Subjects, but also might confirm the same Subject, and if within 6 Months of the Common Debtors death brought in pari passu, the posterior Executor pay in a proportion of the full Executor *ex parte* 2 January 1708 Ramsay contra. Cairns. Because, as different Executors may adjudge the same heritable Subject, so it was thought reasonable, that they should be allowed to confirm the same moveable Subject for fulfilling them to pursue the Debtors of the Decedent: being the former executor Executors might prove Insolvent, or neglect to use Diligence against them. But thereafter it was otherwise decided, and found that where his personal Executors successively confirmed the same Subject as principal Executors *qua* Executors, the second Confirmation is Null 20 July 1722 Cairns of Dunblane contra. Rabyburton of Pitcair. being it could give no title to that which one thus has acquired by expending the first Confirmation.

By the Roman Law which keeps the goods of the wife distinct, from those of the husband during the Marriage if the wife hath a preference to her husband & other Creditors, for getting back her Marriage portion l. 1281 C. que pro. Insigne. Novel. 97 Cap. 3. by the old Custom in Holland, a Rebel was preferred for the provision in her Contract of Marriage, to all other personal Creditors of her Decedent husband, who

they had done more Diligence & Feb. 1682 Crawford contra. E. Murray. And the same opinion for merely in Competition betwixt a Rebel Claiming to be Deceased Executors Creditors to her husband for fulfillment of her Contract of Marriage, and his other Creditors, used all ways to prefer the Rebel to the office. But as most Nations have now introduced a Communion of Goods betwixt Man and wife and give her no privilege for her Dowry; a Rebel has now no preference with us to her husband & other Creditors, for the provision in her Contract of Marriage, but according to the priority of her Diligence 17 Feb. 1682 ^{25 Jun. 1713} ^{19 Feb. 1713} Allan contra. Creditors of Glasgow, because of a wife who comes in for a different Inheritance only Conform to the Date and Registration, should have a preference for any other life rent provision in her favour, the Widows of Merchants and Crafts men whose husbands consist in Moveables, should be in a better case than country Ladies who generally bring great portions with them. For it is no ground in our Law, for such a Distinction betwixt heritable and moveable provisions to Rebels. The wife who, by having a Communion of goods and being in Society with her husband, is particeps criminis, for tines, ought to suffer by the Division of his estate, as the poorer benefit by the Increase of it. According to the Rule, quod est incommodum est et bonum modum. 3^o To allow such a privilege to widows, would tempt them to Waste and spend as fast as their husbands gain, knowing that come what will, they will get all their surviving provisions if there be so much left; and would not be unreasonable to prefer a Norman that helps to dissipate her husband's means, to his just and lawful Creditors who are ignorant of his Civil influences. Who would deal with Merchants, if Rebel Contracts betwixt them and their Wives could sweep away all at their death, to the prejudice of those parties who could not have occasion to know thereof. ^{15. 18. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50.}

Section 7. Confirmation at the fullance of Creditors of the herest of kin of an Intestate.

When Moveables fall to a Heir of kin being by without Confirming, his Creditors may either require the prosecutor to be confirmed and assign them under the pain of being liable to them for the debt; or may obtain themselves decessed executors to the Decedent, as if they were his Creditors; with preference always to them.