A sentance in his lifetime 28 January 1671 Keir contra Nicolson.

By the Civil law, an heir or executor whether testamentary l. 1 pr. ff. de leg. Falcid. & heir al lard l. 18 pr. ff. Cod. de ... right to retain a fourth part of the goods of the succession called the falcidian portion, when the Legacies exceed three fourth parts, for his encouragement to accept of the succession and acquit the Legacies. Which us formerly testators might have exhausted all their deads part by Legacies, without giving any thing to their Executors Nominate; and of late no Legacies to others, the whole belonged to the executors Nominate who were strangers by Virtue of their office. Which testators intended no more by the simple Nomination than to commit the care and trust of their moveable estate to such executors, for the behoof of children or other kin left of kin; whereby these executors were in effect Universal Legatees, if no Legacies were left to others, and so carried off the means of the Deceased from their own children or other kin left of kin. But this being most unjustly and some times ... lucknowledgement to the executor in such a case for executing the office being sufficient. A law was made obliging executors Nominate who are strangers, to account and pay the goods and Gear of the Deceased to his wife children or kin left of kin according to their respective Interests, reserving only to themselves a third of the deads part after Deduction of Debts and Legacies for their pains in Executing the testament. Act 14 Parl. 22 J. 6. Legacies must be Deducted 25 January 1681 Arnot contra Lindsay tho the Statute (d. Act 14) mentions only Deduction of Debts: Because formerly testators might have bequeathed their whole deads part, without allowing any thing to their Executors, and that Law was made to restrict and not to better them. So that if a testator have made an Universal Legacy of all the deads part to another, or exhausted it with particular Legacies such an executor hath nothing but an improfitable office or burden, which he may accept or refuse as he pleases. 29 Novemb. 1626 Forsy tht contra Forsy tht 9 July 1633 Wilson contra L. Ginto 15 January 1679 Paton contra Leishman. And even where so much of the deads part is left free, as would satisfy the executors thereof any Legacy left to himself is imputed in payment thereof ... tantoe without prejudice to him of his Legacy, if it exceed the said third Act 14 Parl. 22 J. 6. tho a Legacy given by a husband to his wife is not understood to compensate her ... Relicte 12 January 1681 Trotter contra Rochead.

The heir of Named executor, returns his third as a stranger, because he is such as to the executry. And Sir George M'Kenzie observes in d. Act 14 tht of opinion, that all executors Nominate are accounted strangers except the Nearest of kin. And therefore a wife Named Executor had the same Interest viz. A third of the Deads part as Executor, besides her own share of the Moveables given to her: because that falls not to her by Succession, but it her own proper Interest arising upon by Dissolution of the Marriage. (The Lord Stair lib. 3 Tit. 8 § 83) Dissolution of the Marriage. Which whether wife or Children or Nearest of kin be Named Executors, Neither of them will have any thing for their Administration except their expenses: because they are not strangers to whom the law provided a third. But this must be understood with this exception Unless their Legall Interest will be less than a third: for they ought not to be worse dealt with than strangers. And Sir George M'Kinzie (ibid.) thinks it probable, that if one of the Nearest of kin were Named Executor, whereby the Benefit as Nearest of kin would be greater than that of executor, he would have only the half and nothing as Executor: but that if one of more than three Nearest of kin be Named Executor, whereby his Interest as Nearest of kin would be less than a third, he might Claim the Benefit of a third as executor for his administration. Because the last Considers Mainly the case of a Stranger Executors, the Statutory part of it is General: And it were Unreasonable to put the Nearest of kin in a worse Condition than a Stranger. If the executor Nominate die after Confirmation before the testament is Executed, he should hardly have the third. Stuart Answers to Dirlt. doubts Tit. Prebendaries. Executors dative Get no Allowance for executing the office 28 Novemb. 1676 Her contra Her seeing other ways than ... gers might frequently Inquire themselves into it. But such Executors dative get their expences. M'Kinzie ibid. Which is very Reasonable, because Remini officium debet esse Damnosum.

The Executor only, has the power of administration and right to pursue debtors of the Deceased, and Intromitters with his goods and gear, against whom Legatarii have no Immediate Action, but only against the Executor: except one to whom a special Legacy is left, who, as Dominus or Vested in the right of the Deceased, may pursue the haver of a thing or sum specially bequeathed, provided he cite the Executor for