

for his interest in the said, to the end it may be known, whether the debts exhaust the special legacy, being debts not repaid before Legacies, which are due only out of the free goods. In process will be sustained at the instance of a special Legacy against the possessor or debtor of the special thing or sum of money, unless the executor be also concerned in the judgment. March 1627 *Forrest* contra *Barth Anault*, November 1628 *contra Morison* *Stair* lib. 2 *Tit. 8* § 3 E. M. *Kenzie* *Inst.* lib. 3 *Tit. 9* § 17. A Debtor of the Deceased taking assignation after his death to a debt owing by the Deceased, cannot found Comprovement thereon to prefer that Creditor who granted the assignation to other Creditors of the deceased: Albeit the assignation was Julimated before any Suit moved by them & fe. 1662 *Granford* contra *E. Murray* 14 febr. 1662 Children of *Monswall* contra *Lownie* of *Maxwellton*, and the said Comprovement would have been sustained in solidum against the Deceased Creditor himself, because the Creditors of one Deceased are to be preferred according to their Diligence, and the assignee is no better case than his Decedent would have been in a Competition with other Creditors, would come in only conform to the Diligence used by him in a process at the instance of an executor for Exhibition of a Coffer given by the executor in the Inventory of the testamental value of 100 Merks: it was not sufficient to free the Debtor from Exhibiting the Coffer, that he offered to pay the 100 Merks as the Value set upon it by the pursuer himself at the Confirmation; upon pretence that if it were worth any more, he ought to bid the overplus of the Value to the testament and confirm it before he could be heard to seek the same, and that there it place to an executor ad Omissa or Male Apprehata to claim it, and not to the Executor who hath given up the Coffer at a price. For the Lords found, that the executor was not obliged to accept the price confirmed, where the Coffer was yet extant, and that he speeded not to bid the over plus of the price to the testament, until the Coffer were first Exhibited, that he may know at what fair Value it should be confirmed 24 November 1627 *Gourlay* contra In a suit at the instance of an executor Dative ad Omissa, for payment of the omitted Goods, there is no necessity to file the principal

Executor confirmed: he being summoned to the Decerning of the pursuer executor ad Omissa by the Commissaries 8 Decemb. 1627

If there be several Executors, called Co-executors, one cannot pursue without the Rest, Concurring, nor Discharge a debt wholly 8 March 1630 contra *L. Lag* 8 March 1632 contra *Lag* 17 March 1630 *simple* contra *M. Nish* and *Dobie* *Beau* & all of them represent the Deceased only as one person; and the Debtor would not by satisfying one Executor, be exonerated of the hands of the rest, seeing all of an equal share in each debt. But if any of them Decline to Concur, he may be got excluded from the office, in a process before the Commissaries: and Actions will be sustained without him 2 June 1629 *Young* contra *Murray* 8 March 1632 contra *McCoy*. But when Executors have executed the testament by obtaining sentence against a Debtor of the Deceased, they may do so with Diligence for their shares of the debt severally, without the Concurrence of the rest, and a Discharge from one of several Executors is good, if the other Executors have got as much as their shares will extend to 24 March 1630 *simple* contra *Dobie* *M. Kenzie* *Inst.* lib. 3 *Tit. 9* § 19. No one of more Executors may be pursued for the whole debt, if he shall be submitted with as much as will pay it.

An Executor may receive payment of, or discharge debts owing to the Deceased, but cannot discharge debts owing to him gratuitously, to the prejudice of his several Creditors: because they are only trustees for the Deceased, and have not the absolute Disposal of the subjects confirmed December 21 Kenlock of that ilk contra *Blair* of *Strathairn*, Nor can they dispose of a Coffer, till they obtain Decrets, or Non Security in their own Names *Stair* lib. 3 *Tit. 8* § 60. But the assignation by an Executor will be void if the executor die before sentence: If an Executor assigned to a debt confirmed was not excluded by a discharge of the debt granted by the executor after Intimation of the assignation; the assignee having obtained sentence in the lifetime of the Executor the after the Discharge 29 November 1674 *Buffie* contra *Arnold*. A sentence against debtors of the Deceased, or bonds obtained from them, doth not state the executors in the absolute right of the Mercat, otherwise than that they as Administrators may assign to the respective persons having Interest therein *Goldwood* *Prot.* July Executors *Stair* lib. 3 *Tit. 9* § 18. For the goods of the