

against him for that effect, before Citation or Diligence used by any Creditor; but not after such Citation or Diligence. Because he could not stop making payment to the Heir or Children or Legataries upon a simple protest that there might be debts owing by the decedent the Creditor appeared by putting in their Claim Stair's v. 570. Which is held to be: *Earl Lass v. 27. S. 5. 6. 7.* But the Lord of Session seemed formerly to have been of a different Opinion 3 Decemb. 1634 *Wair contra Fleming*. When they found it not Relevant to Caution an Executrix from payment of a debt, that the Inventory of the Testament was Exhausted by payments to Legates who had obtained Sentence against her before the Creditor sued or pursued for his debt, but she bind to pay the debt and seek her Relief from the Legataries whom she had rashly paid. Nor will a Decree at a Creditor's Instance warrant the executor to pay, if before payment the after Decree, he was Cited 22 Decemb. 1628 *Lyle contra Gourne* 16 Decemb. 1629 *White contra Reid* of the Ministers of Jedburgh 8 Feby 1637 *Preston contra Executors of Hope* but or Arrestment use in his hand for the Debt of the Decedent 14 June 1625 *Conper contra Lady Hallour*. Which Citation or Arrestment puts the executor in Mala fide to pay to in a Multiple pouding the Creditor be Cited, and their preference Disputed: Unless the Creditor bring pass from the Citation; which passing from it puts the executor in Mala fide to pay, as if he had never been so Interpelled. 5 Decemb. 1623 *Rochead contra his Debtors Executors*. He can the executor securely pay any Creditor after Sentence obtained by him to the prejudice of debts owned in the Testament of the Decedent, tho' the Creditor's Testamentary in fact not, or use no Diligence, without bringing them in the field by a Suspension and Multiple pouding. *Duff contra Aches*.

These are Debts that may be paid without a Sentence of which some can only be Voluntarily so paid before a Court Commenced or Diligence is used against the executor by other Creditors: such as Debts acknowledged by the Debtor in his Testament Stair's v. 566 *McLevrie's* 3 Feby 1621. 7 June 1677 *Andrew contra Anderson*. A Testamentary Creditor need not to Instruct his Debt otherwise than by its being so given up in Testament Spotswood Frat. Feby. Executors for that that line understood to be a captiousable true debts. But such cannot warrantably be so paid after Citation and the Instance of other Creditors to their prejudice. *Rely* March

The Lord of Session seemed formerly to have been of a different Opinion 3 Decemb. 1634 Wair contra Fleming. When they found it not Relevant to Caution an Executrix from payment of a debt, that the Inventory of the Testament was Exhausted by payments to Legates who had obtained Sentence against her before the Creditor sued or pursued for his debt, but she bind to pay the debt and seek her Relief from the Legataries whom she had rashly paid. Nor will a Decree at a Creditor's Instance warrant the executor to pay, if before payment the after Decree, he was Cited 22 Decemb. 1628 Lyle contra Gourne 16 Decemb. 1629 White contra Reid of the Ministers of Jedburgh 8 Feby 1637 Preston contra Executors of Hope but or Arrestment use in his hand for the Debt of the Decedent 14 June 1625 Conper contra Lady Hallour. Which Citation or Arrestment puts the executor in Mala fide to pay to in a Multiple pouding the Creditor be Cited, and their preference Disputed: Unless the Creditor bring pass from the Citation; which passing from it puts the executor in Mala fide to pay, as if he had never been so Interpelled. 5 Decemb. 1623 Rochead contra his Debtors Executors. He can the executor securely pay any Creditor after Sentence obtained by him to the prejudice of debts owned in the Testament of the Decedent, tho' the Creditor's Testamentary in fact not, or use no Diligence, without bringing them in the field by a Suspension and Multiple pouding. Duff contra Aches.

March 1627 Lady Currie hill contra Parents of Summing. And if one give up his Testament a sum owing to him by his Heir, the Debtor is not obliged to pay more than is given up by the Gestator, tho' he was truly owing a Greater Sum: Because the Testament derogates from the preceding obligation Spotswood Frat. Feby. Testamentes. Other debts may be paid at any time, even after process against the Executor at the Instance of other Creditors. Thus any executor, whether Nominate or de facto, may pay a debt due to himself without any process, and found upon the same by the acceptance of Compensation or Exonerating the Executor Stair's v. 473. Privileged debts preferred by law or custom are 4 1677 *Andrew contra Anderson* because they are preferable to all Debts. Debts privileged by law or custom are 4 1. Vins. of Medicaments preferred by law or custom are 4 but not those furnished to him upon former occasions 16 Decemb. 1674. *Kelhead contra King and others* 27 Feby funeral charges which are preferable to all other debts Executrix's v. 25 Novemb. 1680 *Erwinford contra King* which Medicaments sp. Drugs and death bed and funeral expences are the marks of privilege, from the Common Obligation of humanity: the one that the dead may not be Unburied, and the other that a sick man who is not in case to do so himself may not want the proper Remedies for his Recovery. But both funeralia is Comptent only for expences that were Necessary and Decent with regard to the quality of the Decedent, and his free estate descending to his Heir and Executors. And if so much free gear as is not come to them as is sufficient to bury him the expence of his funeral is so far as is decent and necessary should come of the Legacies 14 Decemb. 1709 Lord Justice Clerk and his Lady contra Hamilton of Bangour for to spending on a persons funeral solemnity exceeding to his quality beyond what is suitable to the fortune left to his Representatives, it to bury his estate with himself. Where accounts of funeral charges are not sued within three years after expending thereof, the executor may after three years pay such of them as he was Contractor of since that by the Death but Renounce a privilege to pretend to himself to Claim or not, and the Party of such debts might be proved by law oath; but he may not pay these he did not Contract if so presented 23 Feby 1712 Lord and Lady Ormeston contra Hamilton of Bangour. 3/4 Term rent of the house where the