

No 21.

seed belonging to the defunct; for these belonged no longer to her than her death, but by the confirmation became from that time the property of the executors, which they were bound to account for, and had for the cattle at the selling price, being something above the appreciation: The servants were not part of the executry, and yet their maintenance to a term might have been charged thereon, unless they had engaged with another master; and this charge was saved, by their serving the executors in their new acquisition of the farm for that year, which, as had been noticed before, they entered to possess not in virtue of their nomination, for that could give them no title, but by tolerance from the heritor; the year's rent, as all the defunct's debts, was indeed a burden on the executry, with right to relief from the heir, if any such had taken up the possession; or if the heritor himself had taken it up, he could have made no demand for the rent, and this the possessors had actually paid.

'THE LORDS refused the petition.'

Pet. W. Grant.

D. Falconer, v. 1. No 174. p. 232.

* * * See A case relative to this report, Bee against Wallace, D. Falconer, v. 1. p. 104., *voce* HUSBAND AND WIFE.

SECT. IV.

An Executor has the only Title to Intromit with the Subjects Confirmed.

No 22. 1564. March 23. EXECUTORS of The BISHOP of DUMBLANE against —

A LEGATUM *nominis* being left, the executor nevertheless, and not the legatar, was found to have right to pursue for it; because the debt, quot, &c. must first be deducteu.

Fol. Dic. v. 1. p. 273. Maitland, MS.

* * * The like was found, 9th December 1628, Mackie against Dunbar, No 18, p. 1708.