

EXECUTOR-CREDITOR.

1664. December 10.

GOLDSMITHS of EDINBURGH *against* ROBERT HALIBURTON.

THE Goldsmiths of Edinburgh having obtained decret against Haliburton as heir to his father, he suspends, upon this reason, That the goldsmiths confirmed themselves executors-creditors to his father, and must allow the inventory, which either they have in their hand, or at least should have done diligence therefor. It was *answered* for the executors, That they being executor-creditors are not liable for diligence, having confirmed but to their own behoof, for their payment, and as creditors may arrest, apprise, and do all diligence, severally, the one but prejudice of the other, so may they confirm. *2do*, They found, that having confirmed in Edinburgh, whereas the defunct lived and died within the diocese of Glasgow, that therefore their title was null, and therefore did not proceed. And *lastly*, oppone their decret *in foro*. The suspender *answered*, That they can never object against the nullity of their own title. *2do*, All that time there was no commissariot constituted for the shire of Ayr, where the man died, and so Edinburgh was *communis patria*.

THE LORDS having debated the general case, whether executors-creditors were liable for diligence, waved the same, but found that in this case, in respect of the questionableness of a title, they would not find them liable upon their negligence.

Stair, vol. 1. p. 238.

No 1.

An executor-creditor not liable for diligence, where the confirmation was disputed.