

No 29.
the inventory
not intromit-
ted with, or
to shew dili-
gence against
the debtors,
but only *ce-
dere actionem*
to another
creditor or
nearest of
kin.

they may be satisfied of their own debt; as to any surplus of the inventory, they are only obliged *cedere actionem*, to the effect any other creditor, or nearest of kin, may pursue.—It was *replied*, That all executors, finding caution to make furthcoming the inventory, are alike obliged to account for the same, or to show diligence; and if it were not so, executors having the only title to pursue debtors, and so hindering all other creditors or nearest of kin to pursue, in law and reason they ought to do diligence against all debtors; and if they become insolvent *medio tempore*, it is just that they should be liable.—THE LORDS did sustain the defence, and found, That where there was no executor nominate or dative confirmed, that creditors were necessitated to confirm only *ad hunc effectum*, that they might have a legal title in their person to pursue for payment of their own debt, and that whensoever they were paid, any other creditor or nearest of kin might force them *cedere actionem*, which was an ordinary remedy in law against their further intromission; that therefore they should not be liable to do diligence as to the surplus of the inventory more than paid their own debt. And in this process there being produced contrary practices; one in anno 1667 against the executors-creditors, finding them liable to do diligence in a case Bisket against —*, and Hog against Niven, *voce* IMPLIED DISCHARGE AND RENUNCIATION, where it was found, that executors having no benefit but *medium officium*, they were not obliged to pursue the debtors upon their own charges, but it was sufficient to assign; the LORDS having reasoned long amongst themselves, and resolving to make this a practice in future, decerned *ut supra*.

Fol. Dic. v. 1. p. 240. Gosford, MS. No 381. p. 189.

No 30. • 1673. January 21. FORBES against FORBES.

A MAN having left a legacy of 1000 merks out of the rents due by his tenants, the executor was found liable to have done diligence against the tenants within the year, when the hypothec remained upon the goods.

Fol. Dic. v. 1. p. 240. Stair.

* * * See This case, No 14. p. 2263.

1675. December 14.

CECIL THOMSON, and JOHN HALIBURTON her Spouse, against OGILVIE, and JOHN WATSON her Spouse.

No 31.
An executor
obtaining
payment,
but doing
no diligence,

THE said Cecil, as executrix confirmed to Henry Thomson her brother, did pursue the said Grizel Ogilvie, as executrix to David Thomson her husband, for payment of the sum of L. 5000 left in legacy to the said Henry. It was

* Examine general List of Names.