

No. 76. curators, whereof two or three were necessary, and were given *sine quibus non*, &c. one of these could not insist in a pursuit without concurrence of the rest, for the satisfying of this executor would not be an exoneration to the defender at the hands of the rest of the executors.

Clerk, *Scott*.

Fol. Dic. v. 2. p. 382. Durie, p. 710.

No. 77. 1738. November 7. INGLIS of Murdiston *against* MIRRIE.

FOUR creditors of a defunct having been conjoined in the office of executry, and the debtor of one of the bonds confirmed having made partial payments to one of the executors confirmed, but within the fourth part of the bond, the same was objected to, as being more than the creditor's claim extended to. The debtor pleaded, That without regard to the extent of their respective debts, executors creditors conjoined in the office have an equal interest in the administration, and debtors are in safety to pay an equal proportion to each of them. It was the unanimous opinion of the Court, That co-executors must all concur in pursuing or discharging, because they have but one office, are one body, and represent the defunct as one person, and therefore any one making payment to a co-executor, without concurrence of the rest, does it at his peril. It is true the danger is not great, where the co-executors are nearest of kin, who have an equal interest, in case the payment does not exceed the co-executor's share; but the case of co-executors creditors is different; a voluntary payment in that case to one will be sustained or not, according as the person receiving payment shall, in the event, be found a lawful creditor; and therefore it was agreed, that in this case the payment was not lawfully made.

Fol. Dic. v. 2. p. 383.

* * * For Kilkerran's report of this case see TITLE TO PURSUE.

1764. July 11.

SIR ALEXANDER GRANT and JOHN GREGORY, *against* REPRESENTATIVES of CAMPBELL of Monzie.

No. 78.

Three executors being named by the testator of her last will, can two of them pursue without the third?

Mrs CAMPBELL, by her last will and testament, executed at London, 28th March, 1763, after bequeathing some legacies, " Settles the remainder of her goods, chattels, and personal estate, upon her executors after named, to be applied and disposed of in such manner as the survivors or survivor of them shall think fit; and nominates and appoints Sir Alexander Grant of London, John Gregory of Conduit-Street, and Matthew Gregory of the Island of Jamaica, executors of