

1557. *March 7.* BOGLE *against* STEWART.

THE executour may make the creditour assignee to ony pairt of the gudis and geir aucht to him be the person that is deceist.

*Balfour, (EXECUTOR) No 6, p. 220.*

No 10.

1561. *June 8.* MARION LEARMONT *against* GEORGE HOME.

AN executour may renounce the office of executrie in presence of ane Judge, except he, as executor, has intromitted with ony gudis or geir pertening to the deid ; for in that cais he may not renounce, because *res non est integra*.

The like decided 7th March 1569, Alexander Murray's renunciation.

*Fol. Dic. v. 1. p. 273. Balfour, (EXECUTOR) No 13, p. 221.*

No 11.

1666. *December 13.* SHAW *against* —

SHAW being confirmed executor to his brother a factor at London, and divers decreets being recovered against him, at the instance of the defunct's creditors ; he desired a suspension upon that reason, that he had done diligence to recover the defunct's debts and goods ; and that he could not satisfy the decreets obtained against him, until he should recover the defunct's estate ; and that he was content it should be divided amongst the defunct's creditors, according to their diligences ; and therefore craved a suspension without caution, being content to make faith that he could not get a cautioner.

THE LORDS past a suspension as to personal execution only.

*Dirleton, No 62, p. 26.*

No 12.

An executor who had not recovered the effects, obtained suspension of personal diligence against him.

1674. *November 24.* BUSSIE *against* ARNOT.

UMQUHILE John Arnot having granted a bond of 500 merks to umquhile Janet Cave, John Cave her brother being surrogate executor dative to her, assigns this bond to Harry Bussie, who thereupon pursues David Arnot as representing his father for payment ; who *alleged, 1mo*, no process because the sum is heritable, the bond bearing annualrent before the time that such bonds were declared moveable ; *2do*, absolutor, because the said John Cave the cedent had discharged the debt ; and albeit the discharge be posterior to the assignation and intimation, yet it is valid against the assignee, because executors before the debt be established in their persons by sentence, cannot effectually assign ; for if they die before execution, their title as executor falls, and it is not transmitted to their executor, but to the executors *ad non executata* of the first defunct, and

No 13.

An executor cannot assign a debt *cum effectu*, until he obtain decree for it in his own name. He cannot however uplift a debt in prejudice of an assignation granted by him, after the assignation is intimated.