

allegiance of the pursuer the Lords found relevant, and repelled the defender's allegiance. No. 71.

Fol. Dic. v. 2. p. 382. Colvil MS. p. 250.

* * Balfour reports this case :

IF there be divers and sundry executors, and one of them, without consent of the rest, compone, transact, or give quit, renounce, and discharge, any sum of money or debt owing to the dead the time of his decease, the same is null in the self, and of no avail.

Balfour, No. 7. p. 220.

1617. February 20. HALLIDAY against HALLIDAY.

No. 72.

IN an action pursued by Halliday against Halliday, upon the old dative *ad omissa*, the Lords admitted this exception for the one half, that there being two executors confirmed, the one who had intromitted with the just half was deceased, and so the other could not be pursued for the whole.

Fol. Dic. v. 2. p. 382. Kerse MS. p. 133.

* * A similar decision was pronounced in the case of Peacock against Peacock, 16th July, 1628, No. 26. p. 2189. *voce CITATION.*

1625. January 13. M'MITCHEL against M'QUHARG.

No. 73.

FOUND that the executors are not liable *in solidum* to pay legacies, but *pro virili*.

Fol. Dic. v. 2. p. 382. Kerse MS. p. 133.

Durie reports this case :

IN an action betwixt M'Mitchell and M'Quharg, where two executors of a defunct were convened, for payment of a sum of money, left by the defunct to the pursuer, the Lords found, that where there are more executors to a defunct than one, that any one of them cannot be convened by the defunct's creditors *in solidum*, for the whole debt owing by the defunct ; but that they ought all to be convened, each one proportionally, for their own parts, according as they are in number ; except that where there is one of more only convened, that that one convened had in-