

the half the executry, was under a more particular obligation to execute the defunct's will nicely. *2do*, Had she abstained from or repudiated the office, it had fallen to another that would have been liable to have done diligence; and an intromitter, who by a title debarred another, is liable for diligence. Again, the executrix, at giving up of the inventory, did not protest not to be liable for diligence, but only for actual intromissions; nor would the commissaries have admitted such a protestation, as being directly contrary to the nature of the office. Nay, it is questionable in law, if the defunct at the time could have dispensed with the giving up of inventory, or the being liable for omissions.

THE LORDS found the executrix liable for diligence, reserving all defences.

Fol. Dic. v. I. p. 240. Forbes, p. 274.

No 35.

1744. December. 18. JOHN DUN against JOHN BLAIR.

THE LORDS found, 'That an executor was not obliged to charge himself with particulars omitted out of the inventory, unless he intromitted therewith.'

Act. *Lockhart.*

Alt. *H. Home.*

Clerk, *Murray.*

Fol. Dic. v. 3. p. 181. D. Falconer, v. I. p. 29.

No 36.

SECT. VI.

Diligence prestable by Tutors and Curators.

1623. February 6. WATSON against MATTHEWSON. &c.

IN a tutor count and betwixt Watson and Mathewson, Lang, John Callender in Leith, and others, the LORDS found, That a tutor was not obliged to pursue unresponsal debtors, unless the minor could say that they were repute responsal. That the tutor could not buy the quarter of ane minor's ship better cheap, nor he had bought ane other quarter according to the price given up in testament by himself; and that a tutor might compensate a part of the minor's stock and annuals thereof, with the expenses for his entertainment for years after the tutory expired.

Fol. Dic. v. I. p. 241. Haddington, MS. No 2749.

No 37.

A tutor was not found liable to pay a debt due to his pupil, by a bankrupt, tho' he had no diligence against the debtor, unless it were alleged that the money might have been recovered by diligence.