

No 54. decreets were recovered sinsyne; but she ought to have suspended it upon double poiding, that the pursuer's debt might have been discust, and she either freed thereof by the Judge, or that he might have come in with the rest of the creditors *pro rata*.

Act. Craig.

Alt. Mowat.

Durie, p. 403.

1629. July 16.

TELFER *against* WILSON.

No 55.

THOUGH an executor so far acknowledged a creditor as to make a partial payment, this was not found to bar him from making payment to other creditors, and exhausting the testament thereby.

Fol. Dic. v. 1. p. 275. Durie.

* * * See This case, No 27. p. 2190.

* * * Spottiswood reports the same case :

JANET TELFER having pursued N. Moffat as executrix to her husband's bond, for payment to her of a sum of money, *alleged*, The testament was exhausted by decreets lawfully obtained by the defunct's creditors, and she had obtained decret of exoneration thereupon. *Replied*, She was in *pessima fide* to seek any decret of exoneration, unless the pursuer had been called thereunto, in respect that the defender could not but know her to be one of the defunct's creditors; because, since her husband's decease, the defender had paid annualrent for the said sum to the pursuer sundry years. *Duplied*, She was not obliged to know any; but they that had done most diligence behoved to be answered and obeyed by her; and if this pursuer were presently contending with the rest of the creditors, they would be preferred to her.—THE LORDS ordained the pursuer to dispute with the remanent creditors as if it were yet in seeking of the exoneration.

Spottiswood, (EXECUTORS) p. 120.

1629. December 16.

WHITE *against* The RELICT of the Minister of Jedburgh,

No 56.

Found again
in conformity
with Jeffrey
against Gray,
No 53. p.
3866.

ONE being pursued as executrix by the defunct's creditor, she defending, that the goods were exhausted by decreets obtained by other creditors for just debts, the party pursuer quarrelling no part of the allegiance, but only that the defender ought to allege, that the decret was obtained before the intent-