

(DUE BY EXECUTORS.)

No 73.

THE LORDS found annualrent due for the fums in the inventory bearing annualrent, and that from the date of the confirmation ; but not for other fums which were not mentioned in the testament, as bearing annualrent.

*Fol. Dic. v. 1. p. 41. Forbes, p. 11.*

No 74.

1730. July.

CREDITORS OF THOMSON *against* MONRO.

AN executor-creditor having confirmed and uplifted fums not bearing annualrent, and having a balance in his hand, after payment of his own debt, which he laid out upon interest ; he was found liable to account to the other creditors for the neat balance, only not the profits ; because an executor-creditor is not bound like a tutor, to lay out upon interest the fums he uplifts ; and if he does it, the risk is his own.

*Fol. Dic. v. 1. p. 41.*

1747. June 3.

THE COUNTESS OF CAITHNESS, and LADY DOROTHEA PRIMROSE, *against* The EARL OF ROSEBERY.

No 75.

An executor is not entitled by his commission, to lend out the executry funds upon interest. He is bound to gather in, in order to distribute. If he lend, it is at his own peril. Consequently he cannot be liable for interest.

JAMES, Earl of Rosebery, was confirmed executor to his father, 24th May 1724, and a process was raised against him by the Ladies Margaret and Dorothea, his sisters, to account for the half of the executry due to them by the defunct's disposition, and a decret obtained ; but this being opened, and in the review, the charge given up by him in inventory considerably restricted, there occurred a question, How far he was liable in interest for principal fums, and money upon government securities uplifted by him, especially the executry having been so long in his hands, and also for other subjects, though not bearing profit, when intromitted with ; on account of certain special circumstances to be afterwards noticed ?

*Pleaded* for the pursuers : An executor is a trustee, and it is agreeable to the nature of a trust, that it be managed in the most beneficial manner for the persons interested ; he is indeed to pay the debts ; and if the dead subjects will not do that, he may make use of part of those that are profitably employed ; but it is contrary to his engagement wantonly to uplift money bearing profit, to the prejudice of the owner, and employ it perhaps to his own advantage, and by delaying his accounting by litigious objections, draw more out of the executry than will fall to the person having right.

*Pleaded* for the defender : The business of an executor is to call in the effects, pay the debts, and distribute the remainder : He cannot lend out ; for he ought to have money to answer when called for ; and if he do lend it, he must run the