

EXECUTOR.

1736. July 6. LUNDIE *against* LUNDIE.

No. 1.

THOUGH regularly executors are liable according to the quantities and prices in the confirmed testament, yet the Lords having had occasion to appoint overseers to oversee the part of the inventory of the testament which consisted of crop, their report was found to be the rule of charge against the executrix, though less than she gave up in inventory, unless the creditors would undertake to prove greater quantities.

1737. June 23. JAMES MITCHELL *against* MITCHELL of Blairgorts.

No. 2.

JAMES MITCHELL, taylor, was creditor to Alderston in 2000 merks. Patrick his brother, and nearest in kin, confirmed it *qua* creditor to his brother, but did not recover payment, but only the annualrents. James the son of Patrick, confirmed it as *in bonis* of Patrick his father, and assigned it to Mitchell of Blairgorts; and after Patrick's death, another James Mitchell, *qua* creditor to James the son of Patrick, who then became nearest of kin to the taylor, the original creditor, confirmed it as *in bonis* of the taylor upon the act 1695, c. 41, for payment of his debt: But in the competition, the Lords found that Patrick, who was nearest of kin to his brother the taylor, having confirmed it as creditor to his brother, the property was *in bonis* of Patrick at his death, and being confirmed by his son James as executor to him, might be habily assigned by him; and found the confirmation upon the act 1695 was inept, and therefore preferred Blairgorts. (See DICT. No. 88. p. 3900.)