

1744. December 18. BLAIR *against* DUN.

No. 16.

EXECUTOR nominate making a short or partial confirmation is liable to creditors, legatars, and nearest of kin, only for what he either confirmed or intromitted with, but not for what he omitted, though knowingly, and did not intromit with.—*N.B.* No fraud or dole was or could be qualified. A depending process of count and reckoning at the instance of a nearest of kin against an executor, is no sufficient ground of retention of liquid debts due by the nearest of kin to the executors. (See *Dict.* No. 84. p. 3893.)

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———— \* CUNNINGHAM'S CREDITORS *against* GAINER.

No. 17.

MARY GAINER, upon a general assignation, being preferred before the creditors to the office of executor to Cunningham of Cayan, though their debts were said to exceed the value of his effects in Scotland; they insisted that the silver plate should be sold by roup to the highest bidder, and which the Commissaries ordered; but upon advocacy to us, we remitted with instruction that they should not be roupied.

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1744. December 21.

M'DOUALL *against* His FATHER'S CREDITORS.

No. 18.

CHARLES M'DOUALL was cautioner for his father in sundry debts, and being named executor he confirmed. None of the other creditors having done diligence within the six months, he before his confirmation paid debts, for some of which he was cautioner, and for others he was not, and after confirmation he also paid some debts for which he was cautioner. In the competition with his father's other creditors, we found that he could pay himself all debts due to him before confirmation, or wherein he was cautioner; and therefore those debts paid by him before confirmation, as well as those debts wherein he was cautioner, though paid after confirmation; and preferred him to the creditors who did no diligence within six months. *Vide inter eosdem voce HEIR CUM BENEFICIO.* (See *Dict.* No. 25. p. 10007.)

\* No date in the MS.