a Dative ad omissa and Confirmation 8 June 1676 Irvine contra Forbes. Either the Relict or Bairns or other Nearest of kin purge themselves of Trand, they will be admitted to Bruik their own part in a Confirmation ad omissa as in the principal testament, and the Executor ad omissa made Accountable to them, Hope Min. Prat. Gil. of Testaments 572 Stuart Answers to Dirlt. Dom. bls Gil. Executor.

Because sometimes debts owing to the Deceased are Controverted, or in Bad Hands, and the Executor is Uncertain whether they will be effectual; A Licence to pursue is common by grant to him by the Commissary, for trying before he be at the expence of Confirmation, what can be Made of them; but not Once he is Decerned Executor Stair ibid. 556. It has been Controverted whether Licences to pursue may be granted to all sorts of Executors? Executors Creditors may Indeed have Licence to pursue Act of Sed. 14 Novem 1629. Sir Thomas Hope Min. Prat. Gil. of Testaments 584 says that only principal executors testamentary or dative, and not executors ad omissa, will get Licence to pursue. And so the Lords Decided 14 Decemb. 1621 Halyday contra Perhaps because, the principal executor having made faith that the Inventory given up by him is full, an executor ad omissa should be admitted only upon Certain knowledge, and therefore should not be Licenced to pursue till he be confirm. But Since that time Licences in favour of Executors dative ad omissa have been sustained. The worst and most Doubtful debts are to be omitted out of the principal Confirmation, and the true Reason for granting a Licence is for Recovering such debts as are Dubij Juris, or owing by persons of Shattered Credit. Thus process was sustained upon a Licence at the Instance of an executor dative quia nearest of kin ad omissa 21 January 1624 L. Carnoustie contra

21 Feb. 1668 Scot of Blenkingtoun contra Lady Blenkingtoun and at the Instance of an executor Creditor Surrogate ad omissa 30 June 1665 Stevenson contra Crawford. [illegible] Licence is Indulged only ad diem, that the Executor may sue within a certain time; Ar usque ad Sententiam, or executandos sententiam, that he may Insist and carry on the suit till it is ripe for a sentence. If a Licence be given indendo sententiam or if the sentence happen to be pronounced before out running of the day to which the Licence was allowed, the decreet is not to be extracted, till the pursuer produce a Confirmation, or find Caution to Confirm within a Day appointed by the Judge, Hope Min. Prat. Gil of Testaments 585. A Decreet extracted on a Licence, bearing the Restriction and Quality of executandos sententiam

before Confirming the Subject pursued for is Null Stair ibid. Yea, a Woman Decerned Executrix quia Creditrix to her father, having taken out a Licence to pursue a debt due to the Deceased by Virtue whereof she Commenced a process against the Debtor, and used Inhibition upon the Dependance, and Dying before Decreet or Confirmation: it was found, that the Inhibition fell; and that a Decreet or Confirmation at the Instance of her Children executors dative as nearest of kin to her, and executors Creditors to their Grandfather with a qualification limiting, could not Supply the defect to make the Inhibition Subsist in their favours, in a Competition with the debtors other Creditors 30 June 1705 Jacksons contra Lockhart of Carenwath and others. Because the person Licenced dying ante sententiam, the Decreet Dative, Licence, and personal Inhibition all evanished and died with her. A General Licence to pursue without Mention of any special debt is Null 23 July 1625 Weems contra Davidson. An Executor may pursue without a Licence for a debt Un confirmed, before the Commissary who Decerned him Executor 10 January 1710 Bollwick of Glencorse contra Grotter of Morton hall.

Having explained how the Executors are Made up; I shall in the next place Consider the Effect of their being executors, and the Interest they have thereby, which is either Active, or passive.

Tit. 4.

The Active Interest of Executors Confirmed.

For Distinguishing the Lower Interest of Heirs and Executors: formerly if an heritor or liferenter of Country land rent or Mill rent, of property or annualrent, dispired ere Whitsunday or die in the afternoon of the term day, their executors had right to that whole Year's Rent without Regard to the Conventional terms of payment. But now where an heritor or liferenter dies after, him rising on the term day, his Executors have right to that terms rent. quia in favorem hibiturus dies inceptus habetur pro Completo Digests. pag. 279 Where an heritor died after Martinmas and before Candlemas, his executor was found to have right to that whole Years rent where in he died, and that no Share of it belonged to his Relict who was provided to a liferent Infeftment of annualrent of so many Chalders of Victual payable Yearly or Once in the Year betwixt Yule and Candlemas 12 January 1681 Groller contra Rochead. The Executor of a Donatary of liferent Escheat has right to the by gones of the liferent preceding the Donatories death, albeit not Liquidated and Established by