

Hereunto, or that such goods were ex lante, unless the executor could shew the contrary that he was hindered to obtain or put from the possession of Feb 9 1679. *Proton contra Wright & the Assignments of an Executor are of two sorts, 1 of those imposed on him independent of the will of the Deceased, such as the being liable for his passive debts, those which are owing by him 2 of those imposed by the Deceased as to pay any Legacies he has left.*

Executors ought to pay the Debts of the Deceased before Legacies shall. 59 *Infim. C. 20* Legacies are due only after the debts are paid. Because greater the executor ought to be had to the Interest of Creditors, which it not to lose what is justly due to them; than to the Interest of Legacies, which consist only in Reaping a Benefit, to be taken out of the good of the Succession that shall remain after payment of all the debts; and there are no more Goods than what Remain after all the Charges be Deducted. l. 39 § 1. *De Verb. Signif.* Gifts on Death bed, or Donations, Grants, or Assignations on Death bed, are so far of the Nature of Legacies, that they will not compete with the grantors Honorar Debts, or his Debt here, or their portion due to his Children. 10 July 1628 *Cant contra Edgar* *Harr lib. 3 Feb. 9 1624* *Verd. as to M. 2* *veables* *Feb. 8 1632* *Infim. 543* *844* A person's Legacies, his having granted a bond for love and favour, and a last Will Cause, and Considerations pay able at his death to his Sister which he survived him, and Revocable at the Grantors pleasure: Both his prior and posterior Creditors were found preferable to her; unless she could prove that the Common Debt left at his death, an estate sufficient to satisfy the bond, and all his other debts 22 Decemb. 1740 Creditors of Servants Competing. But provisions made in favour of Children of a first Marriage, were found as any other debt, to affect the father's whole goods in sum, without touching the debts third 17 Novemb. 1638 *Barvis of Frazer contra Bishops.* Gratuitous bond and Assignation on death bed be preferable to Legacies and Will be paid before them without any abatement 14 Decemb. 1676 *M. de lumbria Littlefield.* An Universal Legacy was found not to Derogate from prior assignations on death bed, there being Moveable goods and Sums besides the said assignation, altho the Assignations were not Deliveries, and Reserved a power to uplift and dispose at the executor's pleasure 29 January 1679 *Nikman contra heirs and Successors of Boyd.* If a Gratuitous bond granted

by one upon death bed, payable after the Grantors Decease, and Perforated by his heir was brought in pari passu with his other debts in a Confirmation of the Common Debtors testament Referring to the creditors Relation if they saw cause upon the Act of Parliament, 1648 as Records 22 June 1719. *Forbes contra Knox*. Because the Law of death bed can only be pleaded by the heir, or by the Heir or Child, or by the wife as the death bed was sworn to upon the latest edition of the former legal share of the movable, and the heir being had Perforated the bond, and the Debtor and children had Discharged their Interest.

Creditors may sue for and Demand their debts immediately after Confirmation; but execution upon any Decree obtained by them against the Executor will be superseded for such a temporary time as they may be able to get in the effects of the Deceased, and so his owing to him 17 Feb. 1632 *King and contra Yeaman.* *Harr lib. 3 Feb. 8 1670* *procees* was sustained against an Executor's Decree, who not conforming to the Court's sentence, the office, had paid 14 Decemb. 1669 *contra B. Dickson*.

Executors are Liable to Creditors the Debtor, Children or other Nearst of kin and Legacies, only should in due Inventary, to satisfy the Moveables Confirmed will go on, and the Debts prove it in so far as they have effect in their hands; that is effects of the Deceased Confirmed sufficient to Discharge the debts in Demand. An Executor was found liable to pay the price of land sold to the Deceased by a Minute, without Restringing the Debtor to the heirs, who get the land in fulfillment of the Minute 1 July 1662 *Partie contra Henderson* and some time when Legacies Judist against the Executor for special Legacies of particular things, or of Sums due by bond it is sufficient for him to assign the same to the legatee; but where one had bequeathed a certain sum out of the debts due by his tenants, the executor was found obliged to have done Diligence against the tenants, for upholding the debt within the year, when the Hypothec upon their goods was completed; tho he was not obliged to make up the legacy, if by Diligence he Recovered it not, 21 January 1678 *contra Forbes*. Executors may be Distressed by Creditors, not only for Moveable, but also for heritable debts, as the payment of heritable bond 24 Feb. 1627 *Carr vs regie* *contra Lermonth* 30 July 1630 *L. Carr vs regie* *contra*