

## S E C T. IX.

## Nimious Diligence.—Diligence of Liferenters.—Diligence of Indorsees.

No 74.

A man having suddenly perished at sea, and another, who was his creditor, getting himself within fourteen days confirmed executor-creditor, this was found nimious diligence, and the decree dative was reduced at the instance of the defunct's son, with concurrence of the other creditors; but the Lords declared, that they would have consideration as effiered of the defender's diligence, and what preference he should have thereby.

1631. *March 26.*WINRAHAM *against* WILLIAMSON.

UMQUHILE Thomas Williamson dying by storm upon the sea, the ship and his whole goods having perished, immediately after the word thereof came to Scotland, Gilbert Williamson is confirmed executor to him, to be paid of his own debt, and thereby the said Thomas his other creditors being prejudged, if he should be paid totally of his debt. The son of the said umquhile Thomas, being his only bairn, pursues reduction of that decret-dative decerning him executor, because he, being nearest of kin, craved to be preferred; and the defender alleging, that his confirmation could not be reduced, except that the son would offer him payment of his debt, for the which only he was confirmed executor, which being done, he was content to renounce the office, or that it should be reduced.—THE LORDS found, that seeing the rest of the defunct's creditors assisted this pursuit of reduction, and that the defender had used *nimiam diligentiam*, by confirming himself executor within 14 days after the rumour of the death of the common debtor, and that the term of payment was not then come, the party having died, and perished with most of all his goods, by God's visitation by storm, and not by any fact or misgovernment of his own as a bankrupt, therefore that the defender's testament should be reduced, and ordained the defunct's son to be confirmed executor, to the effect he might be countable to the whole creditors proportionably for their debts, for which they ordained him to find sufficient caution; and in disputation amongst the creditors. THE LORDS declared, that they would have consideration as effiered of the defender's diligence, and what preference he should have thereby.

Act. *Mowat.*Alt. *Burnet.*Clerk, *Gibson.**Fol. Dic, v. 1. p. 243. Durie, p. 586.*1666. *June 22.*The LADY MILNTOWN *against* LAMINGTON.

No 75.

IN a pursuit at the instance of Lady Milntown, and her husband for his interest, which Lady was formerly married to young Lamington, for making up the deficiency of her conjunct fee lands ever since her entry thereto, the LORDS found that the Lady having possessed the conjunct fee lands divers years after her husband's decease, without making any legal intimation to old Lamington of the deficiency or inlake of the rent, the samen ought to assoilzie the defender from all by-runs preceding the date of the out-giving of the special charge;