

behoved to confirm, and take a dative *ad omnia* before extracting of the decret.

No 29.

*Newbyth, MS. p. 28.*

1666. February 1.

A. against B.

AN executor-dative, *ad omnia et mala apprehiata* pursuing the principal executrix, and referring the goods omitted, and prices, to her oath, she *alleged*, that she had already deponed at the giving up of the inventory, and could not be obliged to depon again.

No 30.

THE LORDS ordained her to depon, seeing she might have intromitted after, and more might have come to her knowledge of the worth of the goods, or a greater price gotten therefor.

*Stair, v. I. p. 347.*

1667. July 16.

KER against KER.

THE LORDS found, that an executor, notwithstanding of the oath given upon the inventory the time of the confirmation, may be urged to declare upon oath, whether, since the confirmation, it is come to his knowledge, that some goods and debts were omitted which he did not know the time of the confirmation, and whether he has gotten greater prices than are contained in the inventory.

No 31.

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 14. Dirleton, No 97. p. 39.*

\*.\* Stair's report of this case is No 63. p. 3874. *voce* EXECUTOR.

1673. July 29.

MOWAT against The EARL of SOUTHESK.

THE EARL of Southesk having obtained a decret against James Mowat, for payment of a sum which Mowat was obliged to advance to the Earl in France, Mowat *alleged*, That he had advanced the same to Mr James Maitland, then the Earl's servant, and keeper of his money; Mr James Maitland being examined upon oath, remembered not of the same; whereupon Mowat was decerned. He now gives in a bill of suspension, and *alleges*, That he had then produced in process a count written by Maitland's own hand, and a letter relative thereto, bearing the payment of this sum, which was not produced or

No 32.

In a process, the defender had condescended on payment by a servant, who deponed *non memini*. Afterwards, a written acknowledgment of the