

dened by it; and nothing can abate legacies but the defunct's debts. It was *replied* for the defenders, That the executors could not know what would be free of the executry, till they had fully executed their office, the execution whereof is a debt burdening the executors, as a part of their office, and so must as well abate the legacies as the defunct's debts.

THE LORDS found, That when executors have but an office to the behoof of others, they are obliged to do diligence upon all probable interest of the executry, which cannot be loss to them, but must abate the legacies; but where the executors have the superplus of the executry above the legacies, whereby it is in their power to pursue any thing exceeding the legacies, or not, such pursuits are upon their own peril, and do not abate the legacies, and so found that these executors being the defunct's children, the tutors could not abate the legacies by expenses of process, for the superplus of the executry.

Stair, v. 2, p. 270.

No 1.

1674. November 20. SOMMERVELL against Sir WILLIAM SHARP.

SIR WILLIAM being donatar to a gift of bastardy, was pursued at the instance of Sommervell, as a creditor to the bastard, for payment of his debt, in so far as he had intromitted with the bastard's means. It was *alleged* for the donatar, That he ought to have allowance of what he had laid out for the gift by composition and passing the seals, and his true expense laid out in pursuing the debtors, and recovering sentence. It was *replied*, That in law, a bastard having no means, but *deductis debitis*, the donatar could take no gift to the prejudice of creditors; and, what he had bestowed upon the gift and other pursuits, it being *suo periculo*, it ought not to be allowed. THE LORDS did sustain the defence, and granted the allowance for these reasons, that the creditor could not pursue the debtors without a gift of the King, which he having neglected to crave, the donatar was in *bona fide* to seek the same, and what charges he had laid out in recovering of the debts being just and necessary, whereupon he was ordained to make faith, so that the creditor could have bestowed no less, he ought in law to be looked upon as *negotiorum gestor*, and what was profitably employed ought to be refunded.

Fol. Dic. v. 1. p. 286. Gosford, MS. No 710. p. 429.

No 2.
A donatar to a gift of bastardy being pursued by the bastard's creditors will get allowance of all expenses laid out for the gift, and in pursuing debtors.

1702. January 16. CREDITORS OF PITTENCRIEFF, Competing.

IN the roup of the lands of Yeaman of Pittencrieff, bought by Major Forbes, it fell to be debated among the Creditors, and particularly by Sir Thomas Moncrieff, one of the preferable ones, how the common expenses, such as the extract-

No 3.
The expenses of ranking and sale found to come off the whole head.