1677. *November* 29.

ISBRAND and GERARD SHINKS and their FACTOR *against* The EARL of ROXBURGH.

No 80.

THE LORDS sustained these pursuers' title as executors and having licence, notwithstanding their mother had confirmed this same debt, owing by the Earl's father when he was a Colonel in Holland, to their father; and found they needed not confirm executors to the mother, because she died before the testament was executed, and that the same could not be repute executed, till there was a sentence.

Fol. Dic. v. 1. *p.* 276. *Fountainhall, MS.*

1682. *February* 16. SOMERVILLE *against* EARL of LAUDERDALE.

No 81.

FOUND that an executor dying *pendente processu* for a debt, before sentence, could not assign the testament as to that part, not being *executum.*

Fol. Dic. v. 1. *p.* 277. *Harcarse,* (EXECUTRY.) *No* 477. *p.* 130.

1693. *December* 6. BECK *against* CRAWFORD.

No 82.
A co-executor dying before sentence, the office accresses to the surviving executor. *See* No 69. p. 3877.

IN Margaret Beck's process against Crawford of Drumsuy, it was *objected* by him, that she and her sister being confirmed executors to their father and mother, *pendente lite*, the other sister died, and so Margaret the survivor could only insist for the half, and accordingly she had been ordained to confirm the other half before extract. THE LORDS found there was no need of confirmation in this case; but that the testament not being executed by a deereet, nor the dominion of the goods yet established in the executor's person, the office and right accresced to her *jure sanguinis* as the nearest and as executor; and was so found, Bell against Wilkie *voce* NEAREST OF KIN. The second objection was, that she was not authorised, seeing one of her two curators was dead. THE LORDS sustained the process at the instance of the tutor on life.

Fol. Dic. v. 1. *p.* 277. *Fountainhall, v.* 1. *p.* 576.