

No 95.

‘ quently his title to the legal succession of his moveable estate ; so, by our
 ‘ latest decisions, it has been adjudged to carry the whole executry out of the
 ‘ testament of the deceased, and to make even the part which was not confirm-
 ‘ ed, to transmit to the executors of the person confirming on his death.’
 Erskine, b. 3. tit. 9. § 30.

· *Observed* on the Bench ; The effect of partial confirmation, precisely like that
 of a general disposition of moveables, is to give *jus ad rem* ; but in order to con-
 fer *jus in re* as to any particular subject, the executor must be confirmed in such
 subject itself.

THE LORDS therefore remitted the cause to the Lord Ordinary, with an in-
 struction to pass the bill.

Lord Ordinary, *Swinton*. Act. *G. Fergusson*. Alt. *M. Ross*. Clerk, *Home*.

N. B. The Lord Ordinary having, on the above ground, *suspended the letters*,
 found expenses due by the charger ; with respect to which he reclaimed to the
 Court ;—but his petition was refused, without answers.

S. *Fol. Dic. v. 3. p. 191. Fac. Col. No 144. p. 225.*

1802. May 26. ALISON *against* SCOLLAY'S CREDITORS.

No 96.

A partial con-
 firmation does
 not vest the
 right of the
 whole exe-
 cutry.

IT was objected to the interest produced by the Reverend Charles Alison, in
 the ranking of the creditors of the Reverend John Scollay, That the debt was
 due to his father James Alison, and although he had (November 1799) obtain-
 ed a decree of constitution for payment of the sums due, and had led an adju-
 dication upon it, (11th June 1800) which was produced in the process of rank-
 ing and sale ; these were ineffectual, as they were obtained without any title ;
 for although he had expeded a confirmation as executor to his father, no part of
 the debt now in question was confirmed.

THE COURT were unanimous (19th January 1802) in adhering to the Lord
 Ordinary's judgment sustaining the objections, and finding the adjudication void,
 as a partial confirmation gives only the right of pursuing, in the same way as a
 decree darive would have done ; but the pursuer must confirm to the individual
 debt before extract.

Lord Ordinary, *Bannatyne*. For Alison, *Fletcher*. Agent, *Tho. Gordon*, W. S.
 For the Creditors, *Maconochie*. Agent, *A. Youngson*, W. S. Clerk, *Menzies*.

F. *Fac. Col. No 43. p. 88.*