

1612. *March 13.* L. of DUNDUFF *against* L. of CRAIGIE.

THE Laird of Dunduff, as executor nominated by the young Lady Craigie, and having licence, pursued the auld Laird of Craigie for the third of such debts and sums of money as were owing to the young Laird of Craigie, her first husband, to the third whereof she had right, as his relict. It was *alleged*, that she could have no process, in respect young Craigie's testament was not confirmed. So the pursuer *answered*, that he could not be prejudged by the not confirmation of young Craigie's testament, seeing the delay thereof proceeded not of her default, but by the defender old Craigie, who was tutor to his oyes (grandchildren) who should confirm their umquhile father's testament. Nevertheless THE LORDS considering that the relict could fall nothing by her defunct husband, but the third of his free gear, which could not be known but by confirmation of her husband's testament, that she behoved to urge the confirmation thereof; and albeit she might have retention of her umquhile husband's goods, being in her hands for her third thereof, yet she could not have action for her third of the goods against any other, till the testament was confirmed.

*Fol. Dic. v. 1. p. 273. Haddington, MS. No 2437.*

No 23.

The relict has no action against the defunct's debtors for her third; she must pursue the executors, or if there are no executors, she must confirm herself executrix-creditrix.  
*See No 30. p. 3848.*

1622. *February 14.* STEVIN *against* GOVAN.

IN an action of registration pursued by Bessie Stevin, relict of umquhile John Govan, for registration of an obligation made to her and her umquhile Spouse, and which she craved to be registrate to that effect only, that she might have execution and payment of the one half of the sum contained in the obligation, which pertained to her as relict, there being no bairns betwixt her and her husband;—THE LORDS found, that she as relict could not seek registration, seeing the sums contained in the bond would come under her husband's testament, and so pertained to his executors, who had only that action competent in their persons for registration of the bond, and against whom she had her action for her half of that sum, and if they, who of the law would be executors, or who were nominate, refused to confirm the defunct's testament, the relict in that case might mean herself to the commissars, and obtain herself confirmed executor dative.

No 24.

Found as above.

*Fol. Dic. v. 1. p. 273. Durie, p. 17.*