

confirmed to him, and at the term assigned to prove, producing a testament where another creditor was confirmed for his own debt, which being quarrelled by the pursuer, as not sufficient, to exclude his action against the intromissatrix, where there was only so much confirmed, as would pay that one creditor confirmed executor; the Lords reponed the parties to prove, or to elide and purge the intromission, notwithstanding of that confirmation, which was not respected, and it was not found necessary that the party pursuer should be compelled to take a dative *ad omnia*, but sustained the action against the intromissatrix, except she purged her intromission.

No. 47.

Act. *Monat.*Alt. *Nicholson.**Fol. Dic. v. 2. p. 369. Durie, p. 121.*

* * Haddington reports this case :

If the relict pursued, as universal intromissatrix, allege that the defunct's testament is confirmed by other executors, it will be repelled if the defender offer to prove, by his own oath, that besides the goods confirmed in testament, she has intromitted with more than may pay his debt, and he will not be forced to take a dative *ad omnia*.

Haddington MS. No. 3085.

* * See Douglas *against* Tours, No. 168. p. 9849. *voce* PASSIVE TITLE. Maxwell *against* Stanly, No. 198. p. 9871. IBIDEM; and Anderson *against* Anderson, No. 170. p. 9851. IBIDEM.

1626. December 9. LORD BLANTYRE *against* FORSYTH.

No. 48.

Process was sustained at a creditor's instance against an intromitter with the defunct's effects, and that even without calling the representatives of the defunct.

*Fol. Dic. v. 2. p. 369. Durie.** * This case is No. 24, p. 4813. *voce* FORUM COMPETENS.

1628. December 6. CRANSTON *against* ADIESON.

In an action, a wife pursuing her good-son, married on her daughter, as intromitter with divers goods and bestial, and other gear pertaining to her, and being in her possession divers years before, for rendering the same to her; this action was sustained at the pursuer's instance for the same, albeit it was alleged, that she could have no interest to pursue therefore, seeing the same pertained to her hus-

No. 49.
Process sustained at a relict's instance for goods belonging to her husband at his death,

No. 49. although alleged, that she could have action only for her own part; this because she had had possession before the intromission of the nearest in kin not confirmed.

band, and was in his possession when he died, so that the same pertained to his bairns and executors, of whom the defender's wife was one, and his relict could have no right but to her own part thereof; which allegiance was repelled, and the action sustained at the relict's instance for the whole, in respect of the libel, bearing her own possession divers years before the defender's intromission, and since her husband's decease, and that she offered to find caution to warrant the defender at all hands, who might claim right thereto by her husband's decease; which the Lords found relevant, seeing the defender was not decerned nor confirmed executor to the defunct.

Act. Craig.

Alt. Hart.

Gibson, Clerk.

Fol. Dic. v. 2. p. 370. Durie, p. 407.

1639. January 24.

INGLIS against BELL.

No. 50.

A defunct's creditor is not obliged to confirm *ad omnia*, if he can prove by the oath of the executor confirmed, that he the executor intromitted with goods not confirmed sufficient to pay the debt, for in such a case the executor will be directly decerned to pay.

Fol. Dic. v. 2. p. 369. Durie.

* * This case is No. 73. p. 2737. *voce* COMPETENT.

1671. June 16.

BOWERS against LADY LINDORES.

No. 51.

A relict having intromitted with moveables, to which she had a gratuitous right from her husband, *retenta possessione*, it was found that the creditors had a direct action against her, without necessity of confirming executors-creditors.

Fol. Dic. v. 2. p. 369. Gosford.

* * This case is No. 180. p. 9859. *voce* PASSIVE TITLE.

1709. December 13.

DRUMMOND against CAMPBELL of Burnbank.

No. 52.

An executor's confirmation within year and day of the defunct's death sustained, to purge the vitiosity

GEORGE DRUMMOND, accomptant-general to the excise-office, having married the late Burnbank's daughter, pursues James Campbell, now of Burnbank, her brother, for payment of 3000 merks yet resting of her tocher; and, first insists on the passive title of vitious intromitter. Alleged, executor confirmed. Answered, *Non relevat* to purge vitiosity, because you never offered to confirm till