

No. 73. tromitted with as much of the defunct's goods as would pay the whole debt acclaimed without defalcation completely.

Act. *Nicolson & Mowat.*

Alt. *Laurie & Hope.*

Clerk, *Gibson.*

*Durie, p. 155.*

A similar decision was pronounced 12th July, 1626, Turnbull against Matheson, No. 285. p. 7574. *voce* JURISDICTION.

1630. *March 24.*

SEMPLE *against* DOBIE.

No. 74.

As one of several executors may be sued alone, if he has intromitted with as much as will pay the debt, so may payment be made to one, of the whole debt, when the others have intromitted as far beyond their share.

THIS is mentioned in the 17th of March, 1630, No. 75. p. 2739. *voce* COMPETENT, where the payment alleged made to one of the two conjunct executors, was sustained to liberate from the whole; and that the other executrix, who acclaimed her own half of that debt alleged paid, could not seek any part thereof, nor oppose to that discharge, because she had intromitted with her own half of the whole goods, and with also much more, as the debt now paid to the other executor extended to, which allegiance was sustained to maintain the said payment and discharge; and it was not respected what the said executrix answered, that this was not pertinent to this debtor to allege, that an executor had intromitted with more than his own part, and more than the others; for that was proper to the executors among themselves to count thereon, and which they would do in their own competent time; but this not being alleged by the co-executor, it could not be proposed by the debtor; which was repelled, and the said allegiance sustained: For as an executor may be convened alone, where there are two or more executors, by the creditor for the whole debt, if he has intromitted with as much as may pay it, so may payment be made to one of the whole debt, where the other executor has intromitted with the like quantity more than his own part.

*Fol. Dic. v. 2. p. 382. Durie, p. 514.*

1630. *July 22.*

WILLIAM SALMON *against* EXECUTORS OF JOHN ORR.

No. 75.

Two executors being confirmed, one of them cannot be pursued *in solidum*, except it be replied, that the executor pursued intromitted, or might have intromitted with as much as might have satisfied the pursuer.

*Fol. Dic. v. 2. p. 382. Auchinleck MS. p. 75.*

Durie reports this case:

JOHN ORR being infeft in an annual-rent out of a tenenement pertaining to Salmon, redeemable upon 800 merks, and the said John Orr thereafter resigning the