

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