

S E C T. II.

Where Possession commenced lawfully, the continuing in Possession will not be Vitious Intromission.

No 162.

1628. *January 16.*ALLAN'S EXECUTORS *against* LANDER.

A HUSBAND after his wife's decease, cannot be conveyed as vitious intromitter with her goods to pay her debt, being *dominus omnium ejus bonorum*, and continuing only in that possession after her decease which he once as husband had lawfully acquired.

Fol. Dic. v. 2. p. 42. Durie. Spottiswood.

* * * This case is No 135. p. 5931. *voce* HUSBAND and WIFE.

* * * A similar decision was pronounced 7th February 1629, Brown *against* Dalmahoy, No 136. p. 5932. *voce* HUSBAND and WIFE.

No 163.

1674. *June 10.*LADY SPENGERFIELD *against* HAMILTON.

WHEN a person enters to the possession of the defunct's house by a warrant of the Lords, his possession of the goods in the house does not infer vitious intromission, unless he make use of goods, which *usu consumuntur*, or dispose of goods that are not of that nature, such as beds, tables, &c.

Fol. Dic. v. 2. p. 42. Dirleton. Stairs.

* * * This case is No 97. p. 9762.

No 164.

1676. *December 13.*FAIRHOLM *against* MONTGOMERY.

Vitious intromission found excluded and that there was no claim beyond the value, the intromission being that of a husband continuing to possess his

MR JOHN FAIRHOLM pursues Mr Francis Montgomery for 20,000 merks, due to him by the Earl of Leven, as being vitious intromitter with his Lady's half of the moveables, which he possesseth, and hath not confirmed now by the space of a year and more after her death, which Lady was heir to the Earl of Leven, his debtor. The defender *answered*, That a husband continuing to possess his own moveables, can never be vitious intromitter for his wife's share, though he confirm not within the year. *2do*, The defender hath a disposition from his