

the party replying that the relict was further intromissatrix with the defunct's goods, viz. corns, cattle, and all others his goods, besides the particulars which were purged as necessary; and that she was universal intromissatrix, therefore that he needed not further to be more special; for if she would purge any more intromission had by her, she ought to give the same up herself; but where the party alleged that she was universal intromissatrix, besides the particulars which she purged, he needed not be more special; but the LORDS declared, That they would consider after probation was renounced, at the advising of the cause, if as much should be proved as would make her liable as universal intromissatrix.

Durie, p. 478.

No 147.

1633. January 12.

— against BRUCE.

IN a pursuit of registration of a bond of 500 merks against Bruce of Stanstill in Orkney, as universal intromitter with the defunct's goods, who was granter of the bond, the defender was found universal intromitter, and decret given *eo nomine* against him; albeit it was proved only that he intromitted with a hat of the defunct's, an iron saw, and a chest, and a brazen pistolet pertaining to him, whereof no price was proved, and with a horse, which was sold for L. 80, there being nothing further of any more intromission proved to be had by the defender; neither ever was it proved what other goods the debtor had, or who had intromitted therewith, nor that ever being enquired at the witnesses, albeit the debtor was a gentleman who had heritage. And it was not found enough, (as some of the LORDS thought expedient) that the defender should be decerned to make the particulars and prices thereof, whatever the same might be proved to be worth, forthcoming to the pursuer, and not thereby to make him liable to the whole creditors, as universal intromitter; for the LORDS thought, That he being vitious intromitter, and without a title, or possibility of a title, albeit he had intromitted with any goods of the smallest moment and quantity that might be, and the debt never so great, yet by that intromission, which could not be warranted in law, he was subject to pay the whole debt; but this process was deduced against the defender not compearing.

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 41. Durie, p. 663.

No 148.

A person, who intromitted with articles of small value, but without title, or the pretence of a title, found universally liable.

1636. February 5.

MOWAT and DAGERS against PENNIE.

UMQUHILE DAGERS having pursued Christian Pennie before the Commissaries of Edinburgh, as executrix to Dagers his debtor, for payment of the debt; and after litiscontestation, the said Christirn Pennie dying, this act and process is de-

NO 149.

One of two sisters, who had lived in the same house, having sold some

No 149.
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sired to be transferred in Bessie Pennie, sister to the defender, as universal intromissatrix with her goods and gear; which summons being admitted to probation against her, (she not compearing) the LORDS found the summons proven against her, and decerned against her *hoc nomine* as universal intromissatrix, albeit the probation bore this only, and no more, viz. That the two sisters dwelt together in a little house, where the said sister died, after whose decease the other sister the defender, intromitted with a little timber bed and a pint stoup, which pertained to the defunct, and which the defender sold, and all wherewith she intromitted were not worth so much money as would pay a term's mail of the house wherein they dwelt, and would not extend to six or seven pounds, or thereby; which the LORDS found sufficient to make her liable as universal intromissatrix, seeing no party compeared to propone any defence of hypothecation of the said goods to the said heritor for the house mail, albeit the debt for which the defender was pursued, exceeded hundred pounds.

Act. Mowat.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 2. p. 41. Durie, p. 792.

1668. February 26. REOCH against COWAN.

No 150.

REOCH pursues Cowan, as representing a defunct, to pay a debt due by the defunct to the pursuer, who *alleged* absolvitor, because Reoch was vitious intromitter with the defunct's goods, in so far as he lifted L. 50 belonging to the defunct, and gave his discharge, produced; and albeit thereafter he confirmed himself executor dative, yet he wilfully omitted that sum out of the confirmation, and so, as vitious intromitter, is both debtor and creditor, and cannot pursue the heir.—It was *answered*, That this was *res modica*, and could not infer the passive title.

THE LORDS found that this sum inferred not a general passive title, but only that it made him accountable for the sum.

Fol. Dic. v. 2. p. 42. Stair, v. 1. p. 537.

1675. June 15. LAIRD OF ABERCAIRNIE against NICOL.

No 151.

IN a concluded cause at the instance of the Laird of Abercairnne against Nicol, as behaving as heir, or vitious intromitter with his father's goods, for payment of one year's rent due by his father;

THE LORDS found vitious intromission proved by the defender's making use of his father's tools and instruments, who was a wright, and the son being also a wright, and continuing to work with the same, albeit there was only one witness that proved that he disposed or sold any part of the work-looms.

Fol. Dic. v. 2. p. 41. Stair, v. 2. p. 329.