

his father, who retained the possession of his own goods, during his life, seeing he entered thereafter to the possession both of tack and goods.

No 175.

Act. *Fletcher*.

Alt. ———.

Fol. Dic. v. 2. p. 43. Durie, p. 867.

1662. February 27.

GRAY OF CHALMERS *against* DALGARNO.

No 176.

A GENERAL disposition of moveables, though an incomplete right without confirmation, was sustained to defend the disponee from being liable as vitious intromitter.

Fol. Dic. v. 2. p. 43. Stair.

*** This case is No 169. p. 9850.

*** A similar decision was pronounced 15th June 1681, Baird *against* Robertson, No 42. p. 3856. *voce* EXECUTOR.

1664. July 6.

BROWN *against* LAWSON.

ALEXANDER BROWN having obtained a decret *against* William Lawson as vitious intromitter with the goods of umquhile Willam Lawson of Newmills, he suspends, and *alleges* the decret was unjustly given, because it bears, that he excepted upon a disposition, made by the defunct for an onerous cause, and an instrument of possession of the goods before his death. The charger *answered*, That the decret did bear, that the suspender did judicially acknowledge, that there was no true delivery of the goods.

No 177.
Found in conformity with the above.

THE LORDS found this colourable title sufficient to purge the passive title of vitious insromission, providing the defender confirmed within four months; for they thought the defunct's disposition *in articulo mortis*, was rather as a testament or legacy, in satisfaction of the defenders debt, than as *actus inter vivos*.

Fol. Dic. v. 2. p. 43. Stair, v. 1. p. 209.

1666. July 12.

JOHN SCOT *against* SIR ROBERT MONTGOMERY.

JOHN SCOT pursues Sir Robert Montgomery, as vitious intromitter with the goods and gear of Sir James Scot of Rossie, to pay a debt due by Sir James to the pursuer. The defender *alleged* absolvitor, because any goods he intromitted with, were disponed to him for onerous causes, by the defunct, and delivered conform to an instrument of possession produced.

No 178.

No 178.

It was *answered*, That the disposition bears, horse, nolt, insight, plenishing, and all other goods and gear, which cannot be extended to any thing of another kind, nor of greater value, as current money, jewels, silver-plate, chains, &c. which never past by such general clauses, unless it be specially dispond. It was *answered*, That albeit there had been such moveables, and the defender had intromitted therewith, though another having a better right, might evict the same, yet the defender had a probable ground to intromit, which is sufficient to purge this odious passive title.

THE LORDS found the disposition and delivery relevant to purge the vitiosity.

Fol. Dic. v. 2. p. 43. Stair, v. 1. p. 394.

1668. December 23.

SMITH against MUIRE.

No 179.

A relict who, by her contract of marriage, had been provided to the liferent use of the moveables, was found saved from incurring the passive title.

JEAN SMITH having pursued Margaret Muire, as vitious intromissatrix with the goods of George Smith her husband, to pay the sum of L. 110 pounds due by bond, by the said George to this pursuer; his sister obtained decret thereupon, and apprised the liferent of the said Margaret Muire; who suspended, and raised reduction on this ground, that she could not be liable as vitious intromissatrix, because she possessed her husband's moveables by a title, in so far as by her contract of marriage she was provided to all the goods and gear acquired during the marriage, for her liferent use, and so she could only be liable for making furthcoming the true value after her death. The charger *answered*, *imo*, That there could be no liferent of moveables *quæ usu consumuntur*, and all liferents of *usus fructus* must be *salva rei substantia*; *2do*, Though a liferent could consist in moveables, yet the meaning of such a clause, of all moveables acquired during the marriage, must be understood the free moveables, deducting moveable debt; and cannot be understood to exclude lawful creditors.

THE LORDS found the clause to be understood only of free gear, and not to exclude the pursuer's debt; but found it a sufficient ground to free the suspender from vitious intromission, and to retrench the decret to the true value.

Fol. Dic. v. 2. p. 43. Stair, v. 1. p. 576.

* * * Gosford reports this case :

GEORGE SMITH having granted bond to Jean Smith for L. 100 immediately before his contract of marriage with Margaret Muire, by which he was obliged to provide the said Margaret to the liferent not only of lands but of all moveables and gear which he should purchase during the marriage;—the said Jean did pursue the said Margaret, as vitious intromissatrix, for payment of the said bond; wherein the LORDS found, that the said liferent provision did free her from being vitious intromissatrix, she finding caution to make her intromission furthcoming after her decease. But they found likewise, that the said liferent