

provision did not prejudice any lawful creditor, but gave her right only to the *liquent* of all moveables *deducta ere alieno*, and could only be extended to free goods and gear.

No 179.

*Gosford, MS. No 72. p. 26.*

1671. June 16.

BOWERS *against* LADY COUPAR.

THE executors of Mr Frederick Bowers, minister, having obtained decret against the Lord Coupar, for some by-gone stipends, did pursue the Lady Lindores, relict of the Lord Coupar, as intromitter with his goods and gear, for payment. It was *alleged*, That the Lady had right by disposition from Lord Coupar to his whole moveables, which ought to defend her ay and while it were reduced, and that the pursuers ought to confirm themselves executors-creditors to the Lord Coupar. THE LORDS did repel the defence, and found that the disposition being made by the Lord Coupar to his Lady, and the goods remaining in his own possession until his death, could not prejudice lawful creditors, who needed not to reduce, nor to confirm themselves executors-creditors; but did decern the Lady only to be liable for the goods disposed and intromitted with, but not as a vitious intromitter.

No 180.

Found in conformity with Chalmers against Dalgarno, No 176. p. 9857.

*Fol. Dic. v. 2. p. 43. Gosford, MS. No 451. p. 169.*

\*\*\* Stair's report of this case is No 68. p. 2734. *voce* COMPETENT.

1674. June 10.

LADY SPENCERFIELD *against* HAMILTON.

FOUND sufficient to elide the passive title, that the defender did intromit either by virtue of a gift to himself, or by warrant from the donatar, though the gift was not declared; for his possession *ab initio* being in virtue of a title, though not perfected, could not be said to be vitious, and *quivis titulus etiam coloratus* purges the vitiosity of the intromission.

No 181.

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

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

1674. December 16.

DRUMMOND *against* MENZIES.

IN the process at the instance of George Drummond, for payment of a sum due by Alexander Menzies of Rotwell, as intromitter with the debtor's goods, it was found, (as in diverse cases before) That the pretence, that the defunct was rebel, and his escheat gifted, doth not purge vitious intromission, unless it

No 182.

Found in conformity with Lady Spencerfield against Hamilton, *supra*.

No 182. be alleged, that the defunct's escheat was gifted and declared before intending of the cause, or that the defender did intromit, either by virtue of a gift to himself, or by warrant and right from the donatar for the defender's intromission, though the gift was not declared before the intending of the cause; in respect if there was a gift declared before the intending of the cause, the defender is in the same case as if there were an executor confirmed before the intending of the cause; and if he had either the gift himself, or a right from the donatar before he did intromit, his possession *ab initio* being by virtue of a title, though not perfected, cannot be said to be vitious; and *quivis titulus etiam cloratus*, purges the vitiousness of the intromission.

Reporter, *Strathurd.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 43. Dirleton, No 205. p. 92.*

No 183. 1686. *March.* BELL *against* ELLIOT of Dunlabyre.

A WIFE being pursued as vitious intromitter with goods in Scotland belonging to her husband, who lived and died in England;

*Answered,* The defender was administratrix to her husband in England (the same thing as executrix confirmed in Scotland) and *mobilia sequuntur personam.* 2do, As *super* intromission is purged of a vitious passive title by a prior confirmation, so, *a pari*, the letters of administration were a putative title that ought to purge the vice.

*Replied,* The administration gave no right to goods *extra territorium.*

THE LORDS found the administration purged the vitiosity.

*Fol. Dic. v. 2. p. 43. Harcarse, (PASSIVE TITLES.) No 66. p. 12.*

1738. *December 12.* RENTON *against* WOOD.

No 184. INTROMISSION by the master with the effects of his deceased tenant, by order or with consent of the widow, for payment of the rent due to himself, found not to infer vitious intromission in the master.

*Fol. Dic. v. 4. p. 47. Kilkerran, (PASSIVE TITLE.) No 2. p. 366.*