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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.

\* \* \* Gosford reports this case :

*June 5. 1675.*—IN a pursuit at Murray of Abercairnrie's instance against Nicol, as representing his father, at least vitious intromitter, in so far as he being a wright, he did make use of the work-looms, and employed the same for the space of a whole year after his father's decease, ought therefore to be liable for his father's debts;—it was *alleged* for the defender, That the making use of work-looms could infer no passive title, or make him vitious intromitter, seeing the defender having nothing left him, and being but a tradesman, did employ the same for his livelihood for some time; but his mother, who had intromitted with all the rest of his father's means, did thereafter sell and dispose upon the said work-looms, and so she could only be pursued as vitious intromitter.—THE LORDS did repel the defence, and decerned Nicol to make payment; which seems hard, he not being an apparent heir, nor having made profit by a vitious intromission; and passive titles being of so great import, ought to be qualified with great circumstances.

No 151.

*Gosford, MS. No 755. p. 469.*

1705. *June 29.*

PATRICK ARCHIBALD, Merchant in Leith, *against* GEORGE LAWSON, late Treasurer of Edinburgh.

IN the action at the instance of Patrick Archibald against George Lawson, the LORDS found the transporting of a person's chests or trunks after his death, from the place where he died to the defender's house, relevant to infer vitious intromission against him; and that the inventoring and rousing of the goods by virtue of a posterior warrant from a magistrate, (though before commencing of the pursuer's process) did not purge the vitiosity; albeit a subsequent confirmation, prior to the citation at the pursuer's instance, would have purged the former intromission.

No 152.

*Fol. Dic. v. 2. p. 41. Forbes, p. 19.*

\* \* \* Fountainhall reports this case :

THE deceased Bailie Lawson, being debtor to the said Patrick Archibald in L. 250 Scots, he pursues George, his nephew, for payment, on the passive title of vitious intromitter, in so far as the defunct having lodged in one Jaffray's house, he left sundry trunks, household furniture, and goods in that chamber, which George caused transport after his death to his own house, without any disposition or other right thereto. *Alleged*, That the defunct was so poor, that he had no goods, at least they were of so mean a value, that they would not defray the expense of his funerals, and he neither sold nor disposed upon any of them, and so cannot be properly called an intromitter; and within two or three days after his death, he applied to a Bailie, and procured a warrant to inventory and roup them, which was accordingly done; and afterwards he confirmed himself executor-creditor, which was more than sufficient to purge and