

No 204.

1685. *January.* Sir PATRICK HOME *against* ———.

FOUND, that a confirmation within year and day after the defunct's decease, did purge vitious intromission, though the confirmation was posterior to the pursuit upon the passive title, which was raised within the year.

Fol. Dic. v. 2. p. 45. Harcarse, (EXECUTRY.) No 463. p. 126.

1701. *July 3.* JAMES ALEXANDER *against* KATHARINE LISTON.

No 205.
Found in conformity with the above.

KATHARINE LISTON, relict of William Peat, being pursued by James Alexander, on the passive titles, for payment of a debt of her husband's, before the Commissaries of Edinburgh, she raised an advocacy, on this reason, That the Commissaries had repelled this defence proponed for her, that she could not be vitious intromitter, because she had confirmed herself executor within the year after her husband's decease, and that in respect of this answer, that she never offered to confirm till after citation at the pursuer's instance, and so that could never purge the vitiosity of her prior intromission.—THE LORDS considered, that year and day was allowed by our law for discovering the defunct's estate, and making inventory, and that diligence by the creditors before that was nimious; and therefore, though they should prevent the confirmation by intending a process, yet if the confirmation were expedite within the year, it would save this odious passive title; and it has been oft so decided, 24th January 1628, *Aldy contra Gray*, No 193. p. 9866.; March 21. 1628, *Eleis contra Lindsay*, No 194. p. 9868.; and 28th January 1663, *Stevenson contra Ker*, No 201. p. 9873. where they were found in such cases to be only liable *secundum vires inventarii*; and Stair is of the same opinion, B. 3. T. 9. It was *alleged* here, That if she had only made use of the goods within the year for preservation, or *custodia causa*, it might have excused, but she had sold and disposed on some of them, which the Lords did not regard, because it was for the necessary maintenance of the family, and for payment of the rent of the room laboured by her husband; and therefore found the Commissaries had judged wrong, and advocated the cause to themselves.

Fol. Dic. v. 2. p. 45. Fountainhall, v. 2. p. 117.

No 205.

1705. *June 29.* ARCHIBALD *against* LAWSON.

THE inventorying and rousing of goods vitiously intromitted with, though done by authority of a Magistrate, *ante litem motam*, was found not to purge the antecedent vitiosity.

Fol. Dic. v. 2. p. 46. Forbes. Fountainhall.

* * This case is No 152. p. 9829,