

donatar only had right to the moveables, and they not being the defunct's goods, the defender could not be liable as vicious intromitter, which can never be sustained but where the defunct was undoubted proprietor of the goods. It was *replied*, That albeit the escheat was gifted, yet it was never declared before, which the donatar could have no right to pursue. THE LORDS did sustain the defence notwithstanding of the reply, and found, that the defunct being denounced to the horn, and his escheat gifted either to the apparent heir, or to one from whom he had right, did free him from that passive title of behaviour and vicious intromitter with the defunct's goods; but if he had intromitted before any gift, the case would have been of more difficulty.

No 98.

*Gosford, MS. p. 539. No. 852.*

1723. November 14.

WILKIESON against ALVES.

AN apparent heir having subjected himself to the passive title of behaviour, by intromitting at his own hand with his predecessor's writs and evidents, and having thereafter within year and day entered heir *cum beneficio inventarii*, he pleaded, that the passive title of behaviour was purged by his entering heir *cum beneficio*, just as vitious intromission is purged by a posterior confirmation. *Answered*, The act 1695, gives not the benefit of inventory to those who have had any prior intromission with the defunct's estate; and therefore the heir cannot plead upon his inventory.

No 99.

THE LORDS repelled the defence. See APPENDIX.

*Eol. Dic. v. 2 p. 34.*