

No 188. heritable estate ; and vitious intromission being oft-times by persons who have access to meddle without witnesses, and being always without authority, inventory, or record, it is seldom possible to prove either quantities or value ; and therefore the law has most justly introduced a presumption *juris et de jure*, that the moveable were sufficient to pay the debts, and consequently the same became extinct *ipso facto*. 2do, There is not any law or precedent to distinguish heritable from moveable debts in this case, which cannot but have happened frequently.

“ THE LORDS found, That a vitious intromitter was entitled to pursue the heir for relief of heritable debts ; but sustained the allegiance of vitious intromission to extinguish moveable debts in the person of the vitious intromitter.”

Fol. Dic. v. 2. p. 43. Dalrymple, No 133. p. 185.

No 189. 1729. December 5. LOCH against MENZIES.

Sir WILLIAM MENZIES granted a bond of aliment to his daughter, upon death-bed, for payment of which process was raised against Sir William's representative, upon the passive title of vitious intromission. The defence was, That though this obligation was conceived *per modum actus inter vivos*, yet being granted upon death-bed, and not declared till after death, it was *donatio mortis causa*, which the granter did not design to be binding upon him if he reconvalesced ; and therefore, she had not the benefit of the passive title of vitious intromission, which was introduced in favour only of proper creditors of the defunct, such who could have compelled him by way of process to implement ; and it was added, that a *donatio mortis causa*, in whatever terms conceived, is more properly a legacy than an obligation. THE LORDS found this bond to be a debt relevant to subject the defender as vitious intromitter. See APPENDIX.

Fol. Dic. v. 2. p. 44.

S E C T. VI.

Vitious Intromission Purged by Confirmation, or by declarator of escheat.

THOMSON against THOMSON'S EXECUTORS.

No 190.

CONFIRMATION of the defunct's moveables, before process is commenced at the creditor's instance for vitious intromission, purges the vitiosity whoever be the executor. The administration of moveables, after the death of the pro-