

marry, and defraud their predecessors' creditors; neither are they obliged to run a course of diligence by adjudication, seeing I have this shorter method of fixing it as a plain behaviour; and if you offered to renounce, I would not suffer you, because having immixed, *res non est amplius integra*. Some of the Lords were clear to find it an universal passive title to make them simply liable; but it being craved no higher but *in valorem*, the LORDS found the husband liable in so far as his intromission should be proved against him; seeing they are *una persona in jure*, and his intromission in her right must be reputed to be her own intromission, which if it were, she behoved to answer her predecessor's creditors *in solidum*; and here it was no farther extended than to his actual intromission, and not to make them simply liable.

No 37.

Fol. Dic. v. 2. p. 29. Fountainhall, v. 2. p. 202.

S E C T. VI.

Behaviour not inferred if the intromission can be ascribed to a singular title.

1628. July 8.

DUNBAR against LESLIE.

No 38.

THIS defence against an heir's intromission, viz. that the father's relict had a liferent tack of the lands, and by her tolerauce he intromitted, was found relevant.

Fol. Dic. v. 2. p. 30. Durie.

*** This case is No 15. p. 5392., *voce* HEIRSHIP MOVEABLES.

1630. January 30.

CALDERWOOD against PORTEOUS.

No 39.

PORTEOUS being convened for payment of L. 100 addebted by his father, as behaving himself as heir to him, by intromission with his heirship goods; and he alleging his intromission to have been virtue of an anterior disposition made by his father of the same to him. THE LORDS sustained this disposition to liberate him; albeit the pursuer *replied*, upon the father's retention of the possession, notwithstanding of the disposition, to the time of his decease; which was repelled, seeing the defender *duplicated*, that his father becoming old and decayed in means, and wanting a wife, she being then deceased, and the son be-

No 39.

ing married thereafter, remaining with him together in one family, that could not make the father to be esteemed possessor, seeing rather the son might be reputed to entertain his father, which was sustained. See PRESUMPTION.

Clerk, Hay.

Fol. Dic. v. 2. p. 30. Durie, p. 488.

No 40.

The heirship being confirmed promiscuously with the rest of the moveables, and the apparent heir having right from the executor, the confirmation, though not effectual to carry the heirship, was founded upon as a colourable title to shew, that the apparent heir had not *animus-immiscendi*, since he intromitted by a singular title. This was repelled, the executor being the apparent heir's servant, and confirmed for his master's behoof.

1630. December 16. RELICT of KER against KER.

ONE Weir relict of umquhile John Ker, being made assignee to a bond, made by the said umquhile John, pursues Ker of Cavers, as behaving himself as heir to him, by intromission with his heirship goods, for registration of the bond. And the defender *alleging*, That these goods were contained, and confirmed in the defunct's testament, and that he bought the same from the executor confirmed, whereby he could not be liable for the defunct's debts, as heir, having another title for his intromission, albeit the goods might be found heirship, seeing he intromitted not with the same as heir, but by another title; the LORDS repelled this exception, and found, that the confirmation of the heirship goods, which were not in law confirmable, except the heir had offered collation thereof to the executors, that he might have been partaker with them of the defunct's goods, and the buying of them from the executor, could not liberate this defender from being answerable for the defunct's whole debts, he being that person who was heir of blood, and apparent heir to him, and who ought to have adverted to his own case and danger. This was done specially seeing the pursuer offered to prove, that the testament was confirmed by the travel and expenses of this defender; and that the executor confirmed was his own actual servant, whose name he had used, and interponed in the confirmation, to his own use and behoof; which the LORDS sustained, and admitted it to probation, to infer *ut supra*.

Act. ———.

Alt. Trotter.

Fol. Dic. v. 2. p. 30. Durie, p. 549.

* * Spottiswood reports this case :

BESSY WEIR convened Thomas Ker of Cavers, as he that had behaved himself as heir to his uncle John Ker, by intromission with his heirship goods and gear. *Alleged*, Any intromission he had was by buying an horse from him that was confirmed executor to John. *Replied*, That horse being the best of the defunct's and pertaining to the heir, could not be confirmed as falling under executry. But notwithstanding thereof he being the party that should be heir, and having intromitted with the said heirship horse, must be thought *eo ipso* to