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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.