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be frustrate of his just debt, which were of a dangerous consequence, and yet his daughter should *lucrari ejus dolo*, and possess his whole estate.—THE LORDS, as to the *first*, sustained the testament confirmed by the Commissaries of Edinburgh, having no jurisdiction to confirm but in their own diocess; as to the *second*, they found it of a general concern, and did well consider the same, before interlocutor, seeing it was of great and universal concernment to make the representatives of any person liable passive for all debts contracted by another than the person whom they represent, which had no warrant by our law nor practise; but considering this case as singular, and that the defender's father did obstruct any legal procedure against himself, and died *medio tempore*, they found that the defender should only be liable *in valorem* with the father's actual and vitious intromission with the brother's goods, effecting to the pursuer's debt, and *in quantum* the defunct was *locupletior factus*, and that his intromission could not be purged; but found, that there could be no ground to make her liable to all her uncle's creditors, as being a passive title transmissible, there being no diligence done by any other creditors to constitute the father debtor by decret, upon that ground, whereby the general succession of all representatives and minors was salvèd, and yet, upon good reason, the pursuer's interest, who was not *in culpa*, preserved by the foresaid decret.

Gosford, MS. No 921. & 922 p. 597.

No 23.

1682. November 28. MR JOHN PAIP *against* LAIRD of NEWTON.

THE heir or executor of a vitious intromitter found liable only *in quantum* the intromitter was *lucratus* by the intromission, unless he had been pursued as vitious intromitter in his own life, which would have made his heir universally liable.

Fol. Dic. v. 2. p. 74. *Harcarse*, (AIRES GESTIO, &c.) No 37. p. 8.

No 24.

1686. March. DUFF of BRACCO *against* INNES of Auchluncart.

THE heir of one who was successor *titulo lucrativo*, was found as universally liable for the first defunct's debt, as his immediate predecessor would have been; although an heir to a vitious intromitter is only liable *in quantum lucratus*; because vitious intromission being penal, is not so rigorously extended against the intromitter's representatives, as the passive title of universal successor, which is not a vitious title, but *præceptio hæreditatis*.

Fol. Dic. v. 2. p. 73. *Harcarse*, (AIRES GESTIO, &c.) No 65. p. 12.

\* \* Sir P. Home reports this case

1686. *February*.—IN an action at the instance of Duff of Bracco against Innes of Auchluncart, for payment of a sum, as representing his father, who did represent his grandfather, the LORDS found it relevant to be proven by witnesses, that the defender's father did intromit with the moveable heirship, and mails and duties of the lands belonging to Walter Innes, the defender's grandfather, the pursuer's debtor; as also, that the defender's father did accept from the said debtor, to whom he was apparent heir, and when he was *in familia*, of a disposition to the lands of Balvenny, formerly disposed to the pursuer's debtor by Balvenny, for relief of his cautionry for the said Balvenny, and did make use thereof after the grandfather the pursuer's debtor's decease, by intromission with the mails and duties thereof, or by disposing, or obliging himself to dispoise the same, or consenting to disposition or alienation of the saids land.

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*Sir P. Home, MS. v. 2. No 783.*

\* \* A similar decision was pronounced, Henderson against Wilson, 17th January 1717, No 118. p. 9784. PASSIVE TITLE.

1693. *January 25.*

M'KENZIE of Rosehaugh *against* The MARQUIS of MONTROSE.

No 25.

GEORGE M'KENZIE of Rosehaugh against the Marquis of Montrose, on a bond of pension of L 7 Sterling yearly, during Sir George M'Kenzie's abode at Edinburgh:—THE LORDS found, seeing the bond did not mention the Marquis's heirs, it terminated and expired with the granter, and did not last during the receiver's life, being personal, like those *feuda de cavena et camera* that Craig speaks of, *lib. 1. feud.*

*Fol. Dic. v. 2. p. 73. Fountainball, v. 1. p. 550.*

1711. *January 19.*

LADY ORMISTON *against* HAMILTON of Bangour.

IN the cause often mentioned, betwixt the Lady Ormiston and Hamilton of Bangour, (*see APPENDIX.*) some points came this day to be decided. The first was, how far the Lady could charge Bangour with the extraordinary expenses wared out in obtaining the Lady Houssil to be confirmed executrix to her brother, my Lord Whitlaw; it being *alleged*, That the same were occasioned by the deceased Bangour's influencing his nieces to oppose the same, and raise advocacy of the edict, and so by his fault and means; and this having been found relevant, to give the Lady retention out of the executry, it was now *contended*, That he being minor, it was yet competent for him to allege, that

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An action *ex delicto*, tho' *rei persecutoria* only, found not to go against heirs.