

from thence, she had had an universal intromission with her husband's effects, who was the debtor in the bond sued on; but this being in a question with her heir, who, it was urged, could not be made liable universally, on account of the predecessor's delict;

"THE LORDS found the defender liable *in valorem* of Katharine Penman's intromissions only."

Alt. *Geo. Fergusson.*

Act. *Geo. Clerk,*

Clerk, *Tait.*

*Fol. Dic. v. 4. p. 48. Fac. Col. No 206. p. 152.*

No 158.

1783. July 10.

GEORGE TAWSE *against* WILLIAM FINDLATER and WILLIAM MURRAY.

FINDLATER and Murray appointed Alexander Cheyne their supercargo in a voyage from Peterhead to Bergen, he being to receive, as his reward, a certain share of the profits of the adventure.

Cheyne happened to die on his return, when he had almost reached the land; and on his body's being carried ashore, Findlater and Murray, apprehensive, as it should seem, of suffering loss through his conduct in the business, besides laying hold of the cargo homeward bound, intromitted with his personal effects, particularly the money in his pockets, without having taken any legal step for authorising them so to do.

Afterwards, Tawse, a creditor of Cheyne's, but who had not expedited confirmation, pursued them as vitious intromitters.

*Pleaded* for the defenders, The *bona fides* with which they acted must not only exempt them from the character and penal consequences of vitious intromission, but entitles them to retention of the sums in their hands for payment of the debts due to them by the defunct. On the other hand, the pursuer, not having made up a title by confirmation, has no right at all to insist in the action.

*Answered,* By their intromission, the defenders have subjected themselves to an universal passive representation of the deceased, and are therefore sued as personally liable for his debts: So that it is not the object of the pursuer to attach the moveables of the deceased as *in bonis defuncti*, in which case alone confirmation could have been of any use.

The general opinion of the Court was, That though there was no ground for subjecting the defenders universally as vitious intromitters, yet that they so far stood in that light as to authorise the present action to the amount of the effects intromitted with.

Accordingly, the LORDS found the defenders liable to that extent.

Lord Ordinary, *Brasfield.*

Act. *Rolland.*

Alt. *Maconochie.*

Clerk, *Orme.*

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*Fac. Col. No 103. p. 176.*

No 159.

A supercargo having died on his voyage home, the owners took possession of what money he had about him, without any legal authority. They were not found liable universally, but were not allowed to retain an account of their own claims.