

No 22.

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.