

No 165.

THE LORDS found, That though the servants in the coal-work continued to make use of the instruments of the coal-work, either fixed or unfixed, this did not infer vitious intromission against the Earl; but did not determine to whom the property of the unfixed instruments did belong, such as picks, buckets, and mattocks, &c.; and found the tolerance from Sir Patrick Murray relevant to liberate from the universal passive title, albeit the disposition had a general clause, dubious whether it would extend to the feuers' teinds or not; seeing a colourable title was sufficient to exclude this universal passive title.

*Fol. Dic. v. 2. p. 42. Stair, v. 2. p. 768.*

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S E C T. III.

Where the executor has been confirmed.—Where the party died at the horn:

No 166.

Super-intromission, subsequent to confirmation, infers only restitution; but, if it is prior, the fraudulent concealment makes the executor liable universally.

1616. February 1.

JOHNSTON against KER.

IN an action pursued by Johnston against Margaret Ker, the LORDS sustained an exception of executors confirmed against the libel of universal intromissatrix; but thereafter, it being *replied*, that the relict was nominate, and had intromitted with certain goods, which were not confirmed *ab initio*, the LORDS repelled the exception, in respect of the reply, notwithstanding it was duplied, that the goods and sums omitted were confirmed in the dative *ad omisssa*, and decret of exoneration given in favours of the executor; and that because the LORDS found, that the relict had intromitted before the confirmation, *dolo fecit* that she did not confirm.

*Fol. Dic. v. 2. p. 42. Kerse, MS. fol. 141.*

No 167.

Found in conformity with Johnston against Ker, *supra*.

1627. February 13.

KNEELAND against BAILLIE'S Relict.

IN an action for registration of a bond, by one Kneeland against the Relict of Baillie, who was maker of the bond, she being convened as intromissatrix with the defunct's goods, the LORDS sustained the action against her as intromissatrix, notwithstanding that she *alleged*, That there was executors confirmed to the defunct long before the intending of this cause; seeing the bairn was confirmed executor, and the testament was given up by herself, and that she made faith, and caused find caution in the testament; and that the particulars which were condescended on to have been intromitted with by the defender,