

No 147.

In libelling  
vicious intro-  
mission, the  
pursuer need  
not conde-  
scend on par-  
ticulars.

1630. *January 12.* ADAMSON *against* The LAIRD of FREELAND.

If one be convened as intromitter with a defunct's goods, the pursuer must condescend upon the particular intromission, to the end that the defender may purge it if he can; but if he be convened as universal intromitter, there needs no condescendence be made by the pursuer. The defender may if he please allege, that any intromission he had was of such and such particular goods, which he purgeth: And if the pursuer will allege any further intromission, let him condescend and he shall answer.

*Nota.*—That, after the particulars intromitted with by the defender, given in ticket, the pursuer may condescend in general only, that he offers to prove, that by and attour the particulars given in ticket, the defender intromitted with diverse other things, *ex. gr.* with more kine, horse, corns, &c. providing he be particular in the species, although not *in individuis*.—*January 14.* 1630.

*Fol. Dic. v. 2. p. 46. Spottiswood, (UNIVERSAL INTROMITTER.) p. 352.*

\* \* \* Durie reports this case :

1630. *January 12.*—THE relict pursuing the heir of her father-in-law, to employ 2000 merks to her in liferent, whereto he was obliged by her contract of marriage; and the heir *alleging* payment made to her umquhile husband of that sum, conform to his discharge; and the pursuer *replying*, That that discharge not being subscribed by her, could not prejudice her; and the defender *duplying*, That she was universal intromissatrix with her umquhile husband's goods, and so should warrant the discharge; and the pursuer *alleging*, That the defender should condescend upon the particulars of her intromission, which being declared, she should purge the same; and the other *alleging* no necessity to be special, seeing he alleged that she was universal intromissatrix, and which was relevant in law against her, without condescending, and if she would purge her intromission with any particulars, it was her own part to be special thereon, and he should answer thereto;—the LORDS found, That the defender alleging the pursuer to be universal intromissatrix, needed not to be special, and could not be compelled to condescend upon the particulars of her intromission; but if she would purge her intromission, she ought to do the same, and be special thereon, as she best might, being her own deed.

Act. *Stuart.*

Alt. *Aiton.*

Clerk, *Hay.*

And in this same cause, upon the 13th. *January 1630.* the relict producing a ticket of the particulars of her necessary intromission, and the party offering to prove further intromission, whereon the relict alleged that the party ought to condescend in special, that she might elide the same; the LORDS found, That

the party replying that the relict was further intromissatrix with the defunct's goods, viz. corns, cattle, and all others his goods, besides the particulars which were purged as necessary; and that she was universal intromissatrix, therefore that he needed not further to be more special; for if she would purge any more intromission had by her, she ought to give the same up herself; but where the party alleged that she was universal intromissatrix, besides the particulars which she purged, he needed not be more special; but the LORDS declared, That they would consider after probation was renounced, at the advising of the cause, if as much should be proved as would make her liable as universal intromissatrix.

*Durie, p. 478.*

No 147.

1633. January 12.

— against BRUCE.

IN a pursuit of registration of a bond of 500 merks against Bruce of Stanstill in Orkney, as universal intromitter with the defunct's goods, who was granter of the bond, the defender was found universal intromitter, and decret given *eo nomine* against him; albeit it was proved only that he intromitted with a hat of the defunct's, an iron saw, and a chest, and a brazen pistolet pertaining to him, whereof no price was proved, and with a horse, which was sold for L. 80, there being nothing further of any more intromission proved to be had by the defender; neither ever was it proved what other goods the debtor had, or who had intromitted therewith, nor that ever being enquired at the witnesses, albeit the debtor was a gentleman who had heritage. And it was not found enough, (as some of the LORDS thought expedient) that the defender should be decerned to make the particulars and prices thereof, whatever the same might be proved to be worth, forthcoming to the pursuer, and not thereby to make him liable to the whole creditors, as universal intromitter; for the LORDS thought, That he being vitious intromitter, and without a title, or possibility of a title, albeit he had intromitted with any goods of the smallest moment and quantity that might be, and the debt never so great, yet by that intromission, which could not be warranted in law, he was subject to pay the whole debt; but this process was deduced against the defender not compearing.

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 41. Durie, p. 663.*

No 148.

A person, who intromitted with articles of small value, but without title, or the pretence of a title, found universally liable.

1636. February 5.

MOWAT and DAGERS against PENNIE.

UMQUHILE DAGERS having pursued Christian Pennie before the Commissaries of Edinburgh, as executrix to Dagers his debtor, for payment of the debt; and after litiscontestation, the said Christirn Pennie dying, this act and process is de-

NO 149.

One of two sisters, who had lived in the same house, having sold some