

funct's creditors; and the pursuer *replying*, That the defender, immediately after the defunct's decease, intromitted with all his whole goods, both within and without the houses, and used the same at his pleasure; which intromission cannot be purged by any subsequent right of his escheat, purchased by the defender *ex post facto*, and a long space after his intromission; for, by his preceding vitious meddling with the defunct's goods, he became liable to his creditors; and that deed cannot be purged, by purchasing of the gift of the escheat thereafter, which was not purchased while the space of after his said intromission, specially also seeing there is no declarator obtained upon the said gift hitherto; and the case of the creditors is most favourably to be considered against a donatar;—this exception upon the gift, albeit purchased after the intromission, and declarator depending thereon, wherein litiscontestation is made, albeit not yet decerned, was found relevant, and sustained to purge the preceding intromission, and to elide the action pursued against the defender, as universal intromitter.

No 199.
there was
litiscontes-
tation.
This was
found rele-
vant to purge
vicious intro-
mission in a
process at the
instance of
the creditors
against him,
he being *in
cursu diligen-
tia.*

Act. *Stuart.*Alt. *Nicolson.*Clerk, *Scot.**Fol. Dic. v. 2. p. 46. Durie, p. 771.*

1662. February 7. GRAY against DALGARDNO.

A GIFT of escheat to the intromitter himself, *ante litem motam*, is sustained to purge vitiosity, though there be no diligence on it. The reason given is, that the gift to the intromitter himself is effectual without declarator;—but of this there is some doubt. A special declarator indeed is not necessary, but a general declarator, which is not a process for payment, but a step of diligence, in order to complete the conveyance, like the intimation of an assignation, ought to be requisite in all cases.

No 200.

Fol. Dic. v. 2. p. 46. Stair.

* * This case is No 169. p. 9850.—A similar decision was pronounced 22d January 1675, Chalmers against Farquharson and Gordon, No 45. p. 9683.

1663. January 28.

MARGARET STEVENSON and her SON against KER and Others.

MARGARET STEVENSON pursues Margaret Ker, as vitious intromissatrix with the goods of her husband, for payment of a debt, wherein he was cautioner. She *alleged*, Absolvitor, because her intromission was purged, in so far as she had confirmed herself executrix-creditrrix. It was *answered* by the pursuer,

No 201.
Vicious in-
tromission
purged by
the intromit-
ter's confirm-
ing within
year and day
after the de-
funct's death.