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predecessors decided, as far back as the practiques go, as appears from Haddington, 8th March 1610, Baillie against Home, No 13. p. 9658.; Durie, 15th January 1630, Cleghorn against Fairly, No 21. p. 9664.; and Stair, 28th June 1670, Ellies against Carse, No 27. p. 9668.; and Innes against Duff, No 28. p. 9670.; and since the Revolution, in the Laird of Blair's case, No 34. p. 9675. the LORDS expressly found them liable, if they did not apply to a Judge, and get them inventoried. And the accurate French Lawyer, in his *Traite des Lois Civiles*, in handling heirs making inventories, lays this down as a rule, that if a son immix without getting the papers sealed or inventoried, he renders himself purely and simply heir; and that eminent English Civilian Swineburn affirms, an executor omitting to make inventory is even bound to legatars, and so much more to creditors. THE LORDS, by plurality, found his accepting the key, and taking the papers to which he was specially assigned, did not infer the passive title of behaviour. But all were generally convinced, that it was of a dangerous consequence to allow such intromissions; and, therefore, deserved amendment and regulation, by an act of sederunt, *pro futuro*.

Fol. Dic. v. 2. p. 29. Fountainhall, v. 2. p. 483.

SECT. V.

Husband's Intromission in name of his Wife.

1680. *January* 15. DINGWALL *against* IRVINE.

No 36.

THE LORDS refused to sustain the husband's intromission to bind behaviour upon her (his wife) as heir to her father; yet women heirs may thus shun debt by marrying; only the husband will be liable as intromitter. *Quæritur*, If a confirmation *ante metam litem* will purge it, being of heirship.

Fol. Dic. v. 2. p. 29. Fountainhall, MS.

1703. *December* 17. LINTHILL *against* DICKSON.

No 37.

It was the opinion of the Court, that

HOME of Linthill being creditor to Dickson of Overmains, pursues Phillis Dickson, daughter and apparent heir to his debtor, and William Stewart her husband, on this passive title, that she had behaved as heir, in so far as she had

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the husband's intromission with the rents of an estate, of which his wife was apparent heir, was sufficient behaviour to subject her universally to her husband's creditors; but it being craved no higher but *in valorem*, the Lords found the husband liable in so far as his intromission should be proved against him.

intromitted with the rents of her father's lands, either herself, or her husband in her right of apparency, and so both must be liable. *Alleged*, 1*mo*, She was not *alioqui successura*, seeing she produced a charter of the lands from the Earl of Haddington, superior, to one of her predecessors, providing it to his heirs-male. *Answered*, This is an old right 90 years ago, and may be changed since; likeas, *de facto*, the lands being apprised by a creditor, her father acquired in the said apprising, and took it to his heirs whatsomever, which quite alters the first destination; 2*do*, Yourself granted a bond to a confident, whereon you were charged, and having renounced, adjudication followed, which was the title used in the process of sale, and so makes you liable on the act of sederunt 1662, in Glendonwyne's case against the Earl of Nithsdale, *infra h. t.*—— The Lords repelled the first defence, in respect of the answers. 2*do*, *Alleged*, *Esto* I were apparent heiress *et alioqui successura*, yet my husband's intromission can never make me liable *passive*; such titles, *cum sapiant delictum, suos duntaxit tenere debent auctores*, and being personal, cannot be extended from the husband's intromission to the wife, who may be ignorant and unwilling, that her husband should involve her, and yet cannot hinder it; and this might ruin all heiresses, by binding a passive title on them without their own consent, which will affect them after the dissolution of the marriage, by involving them in vast debts: The wife here cannot be liable, for she did not intromit; and for the husband, he is as little, seeing he is not the apparent heir; for none can be subject to behaviour, but one who can be served heir: And lately in the Earl of Winton's case with one Borthwick, No 66. p. 5327. it being contended, that he having married the heiress of Aldinston, and bought in a comprising, it ought to be redeemable from him, the husband, as if the apparent heir had acquired it; yet the Lords found this was too great an extension of the fiction in law, and that it was not so redeemable from him; see Stair, 19th July 1681, Sir George Monro against the Creditors of the Lord Rae, No 59. p. 5317. And Linthill has taken the wrong method; for he should have charged her to enter heir to her father, and, on her renunciation, have adjudged these rents, as lying *in hæreditate jacente*, and then pursued the husband as intromitter; but to make it summarily a passive title, were both a novelty and hardship. *Answered*, If an heiress can evade the passive title, because she does not intromit herself, and her husband sicklike evite it, because he is nor the person that can succeed or behave, by this circular juggling heiresses may *impune* possess their predecessors estates, and the security of creditors be wholly overturned; for a minor will be liable *passive* for his tutors' and curators' intromissions; and why not a wife for her husband's, who is her curator in law; and though minors will be reponed, yet not without restoring what was intromitted with; and though the pursuer might plead this to be an universal passive title, yet at present he insists only to make the husband liable *in valorem*, in so far as he has intromitted, seeing he pretends no other title but as husband; and if they will not pay the debt, then let husbands abstain; else it were a compendious way for heiresses to

marry, and defraud their predecessors' creditors; neither are they obliged to run a course of diligence by adjudication, seeing I have this shorter method of fixing it as a plain behaviour; and if you offered to renounce, I would not suffer you, because having immixed, *res non est amplius integra*. Some of the Lords were clear to find it an universal passive title to make them simply liable; but it being craved no higher but *in valorem*, the LORDS found the husband liable in so far as his intromission should be proved against him; seeing they are *una persona in jure*, and his intromission in her right must be reputed to be her own intromission, which if it were, she behoved to answer her predecessor's creditors *in solidum*; and here it was no farther extended than to his actual intromission, and not to make them simply liable. No 37.

Fol. Dic. v. 2. p. 29. Fountainhall, v. 2. p. 202.

SECT. VI.

Behaviour not inferred if the intromission can be ascribed to a singular title.

1628. *July* 8. DUNBAR *against* LESLIE. No 38.

THIS defence against an heir's intromission, viz. that the father's relict had a liferent tack of the lands, and by her tolerance he intromitted, was found relevant.

Fol. Dic. v. 2. p. 30. Durie.

*** This case is No 15. p. 5392., *voce* HEIRSHIP MOVEABLES.

1630. *January* 30. CALDERWOOD *against* PORTEOUS. No 39.

PORTEOUS being convened for payment of L. 100 addebted by his father, as behaving himself as heir to him, by intromission with his heirship goods; and he allegingthis intromission to have by been virtue of an anterior disposition made by his father of the same to him. THE LORDS sustained this disposition to liberate him; albeit the pursuer *replied*, upon the father's retention of the possession, notwithstanding of the disposition, to the time of his decease; which was repelled, seeing the defender *duplied*, that his father becoming old and decayed in means, and wanting a wife, she being then deceased, and the son be-