

In this process the LORDS found also, That competent and emitted before the Admiral, could not operate against these strangers, *qui utuntur communi jure gentium*.

No 368.

Fol. Dic. v. 2. p. 209. Stair, v. 1. p. 477.

1671. February 4. STRACHAN against JAMES DRYSDALE and JANET HART.

STRACHAN having obtained decret before the Commissaries of Edinburgh, against Drysdale and Hart, as vitious intromitters, upon a bill of suspension presented, the LORDS did hear both parties upon this reason, That the defender having founded a defence upon a disposition made by the defunct, the charger did reply upon further intromission than what was contained in the disposition, and condescended upon an aquavitæ pot; whereupon the decret was given; whereas if the petitioners had been present to inform their procurators, who had no mandate from them, they would have alleged, likeas they now *allege*, and offer to prove, That the said aquavitæ pot did not belong to the defunct, but to another person from whom he had hired the same, and that the petitioners had meddled therewith, upon his order and consent. It was *answered*, That the decret was opposed, being *in foro contradictorio*, wherein that allegiance was never proponed, and could not be now received, which were a dangerous preparative to frustrate lawful creditors after they have done exact diligence; and that it was sufficient that they acknowledged that the aquavitæ pot was in the defunct's possession when he died, *quo casu* they were not *in bona fide* without a title *immiscere se bonis defuncti*; and the charger being a lawful creditor, is not necessitated to dispute the defunct's right, but it is enough to say he possessed. THE LORDS notwithstanding did pass the bill, and found, that the title of vitious intromitter being of so great importance as to make one liable for the whole debt, albeit their intromission was not considerable, that they might be reponed against a defence omitted by a procurator before any inferior court.

No 369.
Competent and omitted in an inferior court, in matters not ordinarily understood there, is not relevant to bar suspension or reduction.

Fol. Dic. v. 2. p. 209. Gosford, MS. No 329. p. 149.

* * Similar decisions were pronounced, 12th November 1664, Neilson against Murray, No 123. p. 5921., *voce* HUSBAND and WIFE, and 31st January 1677, Garden against Pearson, No 73. p. 6664., *voce* IMPROBATION.

1672. February 9. WOOD against ROBERTSON.

THOMAS ROBERTSON having obtained a decret against Thomas Sinclair for L. 93, and L. 5 of expenses of plea, he pursued William Wood before the

No 370.
A promise was found proba-