

## No 3.

In an exhibition of a contract of marriage, to which the pursuer was not a party, it was found that he must condescend on the clauses made in his favour.

1626. December 16.

CAPTAIN of CRAWFURD *against* The LAIRD of LAMINGTON.

IN exhibition of a contract of marriage pursued by the Laird of Lamington, as heir to his goodsir, *contra* the Captain of Crawford, the LORDS fand, that the pursuer behoved to condescend on the special causes of the contract conceived in his favours; seeing it was for marriage betwixt Grisel Maxwell daughter to the pursuer's goodsir, and the said Captain, and that the said Grisel was deceased long ago without children.

*Fol. Dic. v. 1. p. 281. Kerse, MS. fol. 186.*

1661. December 7.

EARL of ROTHES *against* The TUTORs of BUCCLEUGH.

## No 4.

The Lords allowed inspection of the vassal's retours, to the donatar of ward, that he might know what lands held ward.

THE Earl of Rothes, as donatar to the ward and marriage of the Countess of Buccleugh, with concurrence of the King's Advocate and the Countess also, pursues her tutors-testamentars, for exhibition and delivery of her charter-chest, and all writs and bonds, &c. It was *alleged*, that there could be no process sustained at the Countess her instance; because her tutors were pursued, and she could not be authorised by the donatar against them; and that as no process could be sustained against the Countess, except her tutors were called, *2do*, No process at the donatar's instance, because he had no interest to call for exhibition of the pupil's whole evidents; far less for delivery; but when he, as donatar, should pursue for mails and duties, or for removing, then he would get his intent; unless it were alleged and proven, that the lands whereof the mails and duties were craved, held otherways. To which it was *answered*, that the Countess her marriage was under the donatar's ward; and the law presumes her whole estate to hold ward, unless it were otherways shown; and that she might very well be pursuer with concurrence of the donatar against her own tutors, she being under his ward, and he being in effect her tutor. To the second it was *answered, ut supra*, that as donatar he had good interest to call for the evidents, to the end he might know the holding, and pursue for removing, or mails and duties.

THE LORDS found no process at the instance of the Countess: and yet, seeing she was named in the process as pursuer, they found no necessity she should be called, seeing her tutors were called as havers: and they sustained the process at the donatar's instance against the defenders, for exhibition; to the effect the donatar may have inspection of the countess her retour, as heir to her sister; and her sister's retour, as heir to her father; and their father's retour, as heir to his father, with the instructions of the same only; unless the donatar would

allege, that they, or their predecessors, were infeft in ward lands, not mentioned in the saids retours: and appointed the President to go to the place where the charter chest is, receive the keys from the tutor, open the same, and show the saids evidents to the Earl of Rothes.

*In presentia.*

*Fol. Dic. v. 1. p. 281. Gilmour, No 10. p. 8.*

No 4.

\* \* \* Stair reports the same case:

THE Earl of Rothes, as donatar to the ward of the Countess of Buccleugh, and the said Countess for herself, pursued the Tutors of Buccleugh, for exhibition of the charter-chest, and whole evidences and writs therein, that the donatar may have inspection thereof, to the effect he may know what lands are ward. The tutors compeared, and disclaimed the pursuit, at the pupil's instance, and *alleged, 1mo*, No process, till the countess were called. *2do*, The libel is not relevant to conclude inspection of all writs whereunto the donatar can pretend no interest. *3tio*, *Non relevat* for any writs; because no body is obliged *edere instrumenta contra se.* *4to*, If there were any ground for this pursuit, the lands holden in ward behoved to be particularly libelled.

THE LORDS repelled the first defence, in respect the countess was in *processu*, and found the second defence to restrict the inspection only to the countess and her sister and father, their retours, and warrants thereof, and no more; unless the pursuer condescend particularly of other ward lands, and appointed one of their number to have inspection of the charter-chest, who should shew the procurators of either party such of the writs as they found were ward.

*Stair, v. 1. p. 71.*

1707. November 25. KINALDY against PATON.

JANET FORBES Lady Kinaldy, and Isobel Paton her daughter, pursue an exhibition and declarator against John Paton of Kinaldy, her husband's son of the first marriage, and Paton of Grandholm, &c. on this ground, that by her contract-matrimonial her husband provided her to a liferent-annuity, and her daughter to ten thousand merks; but some while before his death, he was prevailed on by Paton of Grandholm, and others, to make fraudulent conveyances of his whole sums of money and other effects, in favours of his apparent heir, or to others, without onerous causes, for his behoof, whereby the provisions to her and her daughter, in her contract of marriage, were wholly evacuated and disappointed, leaving nothing to implement or fulfil the same; and therefore craved they might depone upon these interrogators: What writs they have, granted by Kinaldy, either to themselves, or third persons in trust for the apparent heir's behoof? *2do*, If they were witnesses to any such papers, or suspect where

No 5.

A wife and children of a marriage craved exhibition of all writs in the defender's hands granted by the defunct husband, in prejudice of their contract of marriage. The Lords found, that the pursuers being personal creditors, who had not affected the subject, could