

1674. *January 22.* HELEN CRANSTOUN *against* WILLIAM SWINTON.

No. 23.

Attempt to prove the tenor of a contract of marriage by presumptions of its existence, without adminicles.

In an action for proving the tenor of the said Helen's contract of marriage with the said William Swinton's father, it was alleged for the defender, That there being no adminicle in writ produced, the tenor of the contract could not be proved, that being absolutely necessary in our law. It was replied, That there having followed marriage upon the said contract, it was a sufficient adminicle to sustain the probation of the tenor, without any other adminicle in writ, seeing it is presumed that there are contracts of marriage prior to the same; likeas, in fortification thereof, the pursuer offered to prove, by the writer and witnesses inserted, the verity and subscription of the contract of marriage, they being all yet alive; and that the pursuer's deceased husband having by him a prior contract of marriage with another wife, he did give the same to the writer of this contract, that accordingly he might write the same. The Lords, finding the probation of the tenor of writs, which are obligatory, were of concernment, Ordained, before answer, that the writer and witnesses should be examined, and if they were clear to depone, as was alleged, they thought that the case of proving of a contract of marriage, whereupon marriage did actually follow, was singular, and did not necessarily require other adminicles in writ, specially the contract not bearing any obligation to infest, or do any other deed in writ for her security.

*Gosford MS. No. 676. p. 399.*

1674. *June 9.* CUNNINGHAME *against* GREENLEES.

No. 24.

A proof admitted of the tenor of a contract of marriage without adminicles; the *casus amissionis* being violence.

Elizabeth Cunninghame pursues a probation of the tenor of her contract of marriage, libelling, that her husband, having borrowed a sight of it, did tear it, and produces the draught of it, and offers to prove the hand-writing to be such a notary's who drew the contract, and is now dead. The defender alleged, That there was no sufficient adminicle produced, nor any subscribed writ, but a scroll; and many scrolls have been written, whereupon nothing followed; and that the pursuer's deceased husband was well known to be a regular person, and no question was moved anent the same in his life, nor several years after his death; and that there are clauses in this contract which are not ordinary, "as providing a part of the woman's tocher to the children of a former marriage."

The Lords sustained the tenor without an adminicle in writ, being a contract of marriage, and the *casus amissionis* being violence, and positively offered to be proved.

*Stair, v. 2. p. 270.*