

1622. July 2. FRENCH *against* FRENCHES and CRANSTON.

No 6.

FOUND no necessity to warn curators of a woman minor, she being married and her husband summoned.

Fol. Dic. v. i. p. 132. Hope, MS. (MINOR.)

* * * See This case *voce* HUSBAND and WIFE.

1622. July 3. FRENCH and the L. THORNDYKES *against* CRANSTOUN.

IN an action for declaring of the marriage of the heirs of L. Thorndykes, pursued at the instance of French-land against John Cranstoun, the LORDS found the requisition made to the heirs not valid to infer the double of the marriage, because the donatar who made the requisition, at the time of the requisition, had not the gift in his hands, which gave him right to the marriage, and whereby it might have been then known that he had power to require; and the said gift was not then shown nor exhibited, for the instrument of the requisition produced, albeit it bore, that the pursuer as donatar, and having the gift of the marriages required, yet it bore not that the gift was there extant, and was then shown and exhibit by him; which the Lords found ought to have been done, and therefore would not sustain it, albeit the pursuer offered to prove in fortification of the instrument, by the witnesses insert therein, that the gift was at that time exhibit and shown, and was extant and read, which was not admitted by the Lords, seeing they found that the instrument ought to have portoped the same: Sicklike they found the same instrument not sufficient, because the parties were required to come to the donatar's own lodging, where he remained in Edinburgh for the time; whereas the Lords found that they ought to have been required to come to treat and confer upon that purpose of marriage in some common unsuspect place, as to a kirk, or tolbooth, or some other such-like, and not to the place of the pursuer's residence: And the Lords found, that this and the like requisitions being made to persons minor, needed not to be made to their tutors and curators; but found this sufficient, being made to the minors themselves, because the consent of tutors and curators is not requisite to the minor's marriage, and so they needed not to be required. Also, in this same matter, the Lords found it was no disparagement, albeit the party offered was not equal in rent with the party required; and albeit that the party offered had no rent, seeing he was equal in blood with the party to whom he was offered, for disparagement consisted not in the means, but in the blood and parentage, or in the defects and imperfections of the body, as if he had been blind, or lame,

No 7.

In a declarator of the double avail of marriage, it was found that requisition, and offer of a party, may be made to a minor without warning his curators.