

No 21. 1618. July 15. A. against B.

IN an action of declarator of the double avail of a marriage, the LORDS found, that the keeping of a diet appointed for coming might be proved by witnesses, *ad hunc effectum*, to produce action for the double avail.

*Kerse, MS. fol. 113.*

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No 22. 1622. June 29. SEMPLE against SEMPLE.

IN the action pursued by Bryce Semple against Semple, for the double avail of his marriage, the LORDS esteemed the single avail to three years rent of the part, which being 700 merks, they esteemed the single avail to 2900 merks, and the double to 4000 merks.

*Fol. Dic. v. 1. p. 570. Haddington, MS. No 2641.*

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No 23. 1622. July 4. FRENCH & L. THORNYDYKES against CRANSTON.

IN the action of declarator of the double avail of the marriage of three sisters, daughters and heirs of umquhile Robert French of Thornydykes, against French of Frenchland, the LORDS found, that requisition and offer of a party might be made to a minor, albeit her curators were not warned; and that a donatar minor might warn, and require, and offer, without her curators: That the requisition was null, if the gift were not shown, or ready, and offered to be shown to the party required: That the requisition was null, if the requisition was made to the party required to meet in the private dwelling-house of the donatar; but that it should be craved to be kept in a public place, such as the Tolbooth or Church. They found also, that it was no disparage to offer a Gentleman to an heretrix, albeit he were unawed; and that it was not the parity of their wealth and means that made disparity, but only of their blood, or some personal defect, and notable deformity or infamy.

*Haddington, MS. No. 2644.*

\*.\* Durie reports this case.

1622. July 11.—IN the action pursued at the instance of French of Frenchland against L. Thornydykes, for the marriages of the apparent heirs of Thornydykes, being three sisters, whereto the L. of Frenchland claimed right, as donatar thereto, constituted by the King's Majesty; it was *alleged* for the defenders, whose marriages were acclaimed, That they ought to be assoilzied,

and that they should not be subject in payment of any marriage ; because, the lands falling in ward by the decease of their umquhile father, who was the King's Majesty's last tenant thereof, and so, by that ward, the marriage of the heir, or apparent heir of that vassal, pertained to the King. It is true, that the defunct, their father, left a son behind him, who was brother to these women, now defenders ; which son's marriage was gifted by the King's Majesty to a donatar, who had recovered decret thereupon for a sum modified by the Lords, to be paid in satisfaction thereof, and which sum was paid ; and, therefore, that marriage of the apparent heir's being declared against the excipients, since the decease of the said apparent heir, and also being paid by them, the same must liberate the defenders from all payment of another marriage, seeing they alleged, that, by the decease of one vassal, there could be no marriages sought but only one. This allegiance was repelled by the Lords ; and it was found, that one vassal deceasing, the marriage of his apparent heir dying marriageable, albeit never entering to the lands, pertained to the King, and after that apparent heir's decease, the marriage of the next apparent heir marriageable, and after his decease, the marriage of the next apparent heir, and so forth *successive*, of ilk apparent heir marriageable after others, how many soever they were ; and albeit they, nor none of them, were entered to the lands, but that they died before their majority, the marriage of every one of them pertained to the King ; and so that, by the decease of one vassal, as many marriages fell to the King as there should happen to be apparent heirs to the vassal ; and that the payment of the marriage for the first apparent heir marriageable, elided not the right of the marriage of the next apparent heir to that vassal, after the first's decease, and so forth, from the second to the third and fourth, and further, how many soever there were, the said apparent heir dying marriageable ; and this they found they would observe hereafter, where the like cases occurred, which was never decided before at any time.

In this same process the LORDS found, that a requisition made to the party whose marriage was sought, to come to the Kirk to accomplish the marriage, was not sufficient alone to infer an action for the double avail of the marriage, except there had been also a lawful requisition made to that party to come to some unsuspected place, for conferring with the person who was offered, and which conference should have been required to have been had, before the time against which the requisition was made to come to the Kirk for accomplishment, &c. without which requisition to come and confer had preceded, the LORDS found the other could not be sustained.—See No 24. *infra*.

Act. Hope & Stuart.

Alt. Nicolson, Belshes, & Craig.

Clerk, Scot.

*Durie, p. 30.*

\* \* \* See No. 7. p. 2179.