

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