

No 27. personal debts contracted by the defender or his predecessors, nor to real burdens not acknowledged or confirmed by the superior, nor to no other burdens whatsoever. This allegiance was sustained, notwithstanding of the answer; for the LORDS found, that no sum could be modified for the defender's marriage, but with respect to defalcations of his fent and estate of the burdens, under which the defender lay, whether the same were real or personal, or whether the real were confirmed by the superior or not; for, if they were not confirmed, the superior had his other casualties thereby; but, in this pursuit for the marriage, which was personal, and respected the person of the vassal, and not real, for the paying of the profits of the land to the superior, the LORDS found, that consideration ought to be had of all the vassal's true debts, either personal or real, and that, according to his free estate, a modification might be decerned for the marriage, and which modification would be made, not only according to the avail of these lands, which he held of that superior, but according to his whole estate of lands, albeit holden of other superiors, if he had any, and also according to the sums, and other moveables, which he had beside his lands; so that, as all came under consideration in the valuation of his estate, to make up the modification, so all should, in like manner, come under consideration, which might justly defalk and lessen the quantity thereof.

Act. *Nicolson.*

Alt. *Aiton.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 570. Durie, p. 520.*

1631. *June 20.*

ANDREW DICKSON *against* Dr SCOTT.

No 28.

THE gift of marriage of an apparent heir falls to the donatar, and may be pursued against a singular successor, if the said apparent heir died infert, although unmarried, if he dispensed the land to a singular successor.

*Auchinleck, MS. p. 124.*

1662. *February 25.*

ALEXANDER ARBUTHNOT of Fiddes *against* KEITHS.

No 29.

The superior's consent to his vassal's marriage, by being a witness in the contract, excludes him from the single avail.

ALEXANDER ARBUTHNOT of Fiddes pursues Keiths, the two daughters of John Keith, and their husbands, for the avail of their marriages, belonging to him, as donatar, by the Earl of Marshall, their superior. The defenders *alleged, first*, No process; because, nothing produced to instruct that the lands were ward, or that the Earl of Marshall is superior; *secondly*, Absolvitor from that conclusion of the summons, craving not only the ground to be pointed for the