

1667. November 29.

MARGARET PRINGLE, and her Spouse, *against* ROBERT PRINGLE of Stichel.

MARGARET PRINGLE pursues an exhibition of all writs granted by, or to her umquhile brother, *ad deliberandum*.—It was *alleged*, No process for writs granted by him to strangers, except such as were in his family, conform to the late decision, Shaw of Sornbeg *contra* Tailzifer, No 29. p. 4006. which they declared they would follow as a rule.—The pursuer *answered*, That he insisted for exhibition of such writs as were granted by the defunct to any person which were in his possession or charter-chest the time of his death.

Which the LORDS sustained.

*Fol. Dic. v. I. p. 284. Stair, v. I. p. 490.*

1675. December 22.

RACHEL MAXWELL and her Husband, *against* MAXWELL.

RACHEL MAXWELL pursues reduction and improbation against Mr Hugh Maxwell, upon this title, that the lands of Dalswinton having recognosced by a disposition made by John Maxwell, Sir Robert Dalzell got a gift of the recognition from the Exchequer, and gave a back-bond obliging him 'to apply the benefit of the gift, over and above the expenses of the gift, and the sums due to himself, to John Maxwell's creditors, and the superplus to his wife and children by sight of the Exchequer.' Yet thereafter Mr Hugh Maxwell being intrusted for his wife, John Maxwell's eldest daughter, and for Sarah Maxwell her sister, had procured a discharge of that back-bond, and had procured a new back-bond to be received by the Exchequer, altering the first back-bond, and declaring that Rachel Maxwell, the second daughter, should have only the benefit of 2000 merks; whereupon Mr Hugh Maxwell, by right from the donatar, is infest with that burden; and therefore Rachel craves that the posterior back-bond, and Mr Hugh's infestment following thereupon, be reduced. There is also in this process a declarator, 'That the pursuer hath right to the half of the estate, with the burden of the debts and gift.'—The defender *alleged* no process, because all parties having interest were not called, viz. the wife and children of John Maxwell, who by the back-bond had right as well as the pursuer.

THE LORDS found, That as to the improbation and reduction, there was no necessity to call the relict and children of John Maxwell, it being only for removing the second back-bond, which was to all their prejudices; but as to the declarator, 'that the pursuer had right to half of the lands,' declared, That when they should insist in that member of the libel, they would consider the defence, in respect that the proportioning of the interest could not be discussed

No 31.

Exhibition granted of all deeds made by the defunct, and in his possession at his death.

No 32.

Exhibition *ad deliberandum* not sustained for producing writs made by a defunct to strangers, unless they were lying by the defunct, or assigned to the heir apparent.