

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.

No 32. without calling the relict, Mr Hugh's wife, and the heir of the other daughter.

The said Rachel did also insist against Mr Hugh in an exhibition *ad deliberandum*, wherein the LORDS ordained the defender to depone upon all writs granted in favour of the defunct, or granted by him in favour of his wife, children, or other persons in his family, or in favour of any other, 'if they were retired and lying by the defunct the time of his decease,' because then they were his writs, and were equivalent to renunciations or discharges of the retired rights; but would not sustain the exhibition for writs made to strangers, and assigned to the defender, who is an apparent co-heir, upon presumption that they might have been retired by the defunct, unless it were proven that they were truly retired.

*Fol. Dic. v. 1. p. 284. Stair, v. 2. p. 389.*

1683. *January.* JEAN BUCHANAN *against* The MARQUIS of MONTROSE.

No 33.

MAJOR GRANT having got from the Laird of Buchanan a disposition of lands redeemable by the granter's heirs, and the charter-chest delivered to him, he disposed his right to the Marquis of Montrose, against whom Buchanan's daughter pursued an exhibition *ad deliberandum*.

*Alleged* for the defender, That the pursuer could have no inspection of papers but such as contained clauses in her favour, or were in the defunct's possession at his death, which the charter-chest was not.

THE LORDS, in respect that Grant's right was redeemable, found the charter-chest was the common evidence both for the right to Grant, and the reversion in favour of the pursuer; and therefore decerned.

*Harcarse, (EXHIBITION.) No 486. p. 133.*

1705. *November 20.* BUCHANAN *against* MARQUIS of MONTROSE.

No 34.

Exhibition found relevant of all writs granted by the defunct to persons in his family at his death, upon which infestment had followed; but refused as to writs granted to strangers.

JANET BUCHANAN, daughter and apparent heir to John Buchanan of that Ilk, and Henry Buchanan of Leny her husband, pursue the Marquis of Montrose and others, in an exhibition *ad deliberandum*, of all writs either granted by or to her predecessors, for inspection, that she may deliberate whether to enter heir or not.—*Alleged, imo*, You have no interest to pursue, because the whole tract of the infestments of the estate of Buchanan are all conceived in favour of the heirs male; and your father stood infest as heir male; so you being only heir female have no claim; *2do*, I cannot exhibit to you, because it is offered to be proven, that your father was totally and irredeemably denuded of the estate in favour of Major Grant, from whom the Marquis derives right; *3tio*, An exhibition *ad deliberandum* gives only right to call for a sight of the writs granted to