

1676. *July.* ANENT THE MARRIAGE OF RELATIONS.

JOHN SUEIDIVIN, in his commentary *ad tit. Institut. de Nuptiis, ubi tractat de gradibus cognationum, in 3tia regula, pag. mihi 79, 80, et 81*, maintains, from *Cardinalis Hostiensis, &c.* that collaterals, distant in the fifth degree, may marry lawfully together; *ex gratia*, my good-son's brother might marry my daughter. And it is not enough to say, that cannot fall out through the brevity of men's age, that one can scarce see the fourth or fifth generation, either direct or collateral; or, *2do*, if he did see it, it were a most unequal disparage for years; because this is but tergiversation, and, if it did exist, we behoved to answer from some rule and principle in law. My objection against the lawfulness of such a marriage is, that, *jure civili*, not only *ascendentes et descendentes in recta linea* are prohibited to marry together *in infinitum*, but likewise *ii qui vicem locumque parentum et liberorum inter se obtinent*; *parag. 1, Institut. de Nuptiis, l. 53. D. de Ritu Nuptiarum*; now a great-grand-uncle is in room of a parent to his abniece. See Vinnius, *ad dictum par. 1, et par. 3 et 5, Institut. de Nuptiis*; and moral honesty seems to avoid such a congress. *Vide Constitutionem 2. Alexii Commeni, et Constitutionem 2. Isaaci Angeli. Vide supra, November, 1671, No. 257.*

*Advocates' MS. No. 492, § 8, folio 258.*

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1671 and 1676. RICHARD MAITLAND of Pitreichy *against* GORDON of Geicht.

1671, *June 13th.*—RICHARD MAITLAND of Pitreichy having, in December, 1669, obtained a declarator of recognition against Gordon of Geicht of the lands of Geicht, thereafter, *ex gratia*, he enters into a minute with him, by which he obliged himself to dispone to Geicht, at the sight of men of law, the said recognition, and to secure his lands from all possible hazard that might result therefrom; on the other hand, Geicht was bound to ratify some unquarrellable wadsets that Pitreichy had upon these lands, as also to pay him in a certain sum of money for the foresaid communication of his right. Thir articles, it seems, Geicht was unwilling to fulfill, and being required, refused; whereupon Pitreichy raises a summons of declarator of the nullity of the said articles, in respect Geicht has failied to fulfill his part thereof; in respect whereof, he craves to be liberated thereof, and so reponed to his own place, as if such articles had never been condescended on.

It was ALLEGED,—The summons was most irrelevant, unless they could say, (which was not,) that the said articles contained an irritant resolute clause in case of not performance; but they containing no such irritancy, there is no man in law or reason will maintain, that such articles will afford any more save an action for implement: and if Pitreichy will turn his libel into an action craving performance, then Geicht *pari passu* as the pursuer fulfills to him his part of the said obligation, so shall he perform to him, (neither was he ever unwilling;) and what day he takes to produce a valid disposition, he will take the same to pay him his money. *Vide infra, No. 209.*

The Lord Halkerton inclined to convert it into an action for implement; reserving always to the Lords their consideration of the pursuer's damage and prejudice,