

No 13. 1611. *June 25.* Mr HARRY STIRLING *against* LAIRD of Swynfield.

THE donatar to the marriage of a vassal having ward, making offer of an agreeable party, his offer is not obeyed, unless the vassal consent to give a conjunct fee equivalent to the third of his living, and make security thereof by contract of marriage.

*Fol. Dic. v. I. p. 569. Haddington, MS. No 2246.*

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No 14.

A party having offered at the bar to accept a lady, whom he had before refused, the parties were appointed to meet at a particular church to celebrate the marriage, with certification.

1611. *July 31.* STIRLING *against* NISBET, (or HOME *against* BROWN.)

Mr HARRY STIRLING, donatar to the ward of marriage of John Nisbet, son and apparent heir to umquhile Philip Nisbet of Swansfield, pursues John to make payment of the single avail of his marriage, viz. 5000 merks to him, as donatar, with the double avail thereof, in respect of the offer made by the pursuer to John, of Isobel Stirling, daughter to umquhile James, as party agreeable to him in marriage without disparrage, and of John's refusal of that offer, extending the double avail to 10,000 merks. *Alleged* no process for single nor double, because John was ever willing, and is yet, conform to the requisition and offer, to compleat marriage with her. THE LORDS ordain either of the parties to meet and convene within the parish kirk of Stow, and that betwixt and the 2d September, which day the LORDS assign to them to that effect, and there to conclude, compleat, and accomplish the marriage in face of the holy kirk, with certification if John failzie, the LORDS will proceed and minister justice, as effeirs.

*Fol. Dic. v. I. 569. Nicolson, MS. No 396. p. 274.*

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No 15.

1615. *July 19.* NISBET *against* L. of LEY.

IN an action betwixt Hugh Nisbet and the L. of Ley, the LORDS found, that the kirk had no prerogative in the matter of marriage above another overlord, except in antiquity.

*Kerse, MS. fol. 113.*

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No 16.

1616. *July 2.* KIRBO *against* ———.

IN an action pursued by Magnus Kirbo, and the heirs of Kirbo of Chapel, for the marriage of the free daughters, which was disposed by the E. Glen-

cairn, as superior, the LORDS found this allegiance relevant, that one of the daughters was not a year before the decease of her brother, whose marriage was disposed *per expressum*.

No 16.

*Kerse, MS. fol. 114.*

1616. July 26. DRUMMOND *against* LO. MANNER.

IN an action at the instance of Mr William Drummond and Lo. Manner, the LORDS found, that a procuratory was not necessary to be shown, where the parties who had received it had power, but that the instrument of requisition alleging him to be procurator was sufficient.

In the same cause, they found, that the offer made by Manner now instantly at the reasoning of the cause, was not relevant, in respect that there was once a party offered.

No 17.

Found in conformity with Tullibardine against Drummond, No 7. p. 8519.

*Fol. Dic. v. 1. p. 568. Kerse, MS. fol. 114.*

1616. July 27. E. ANGUS *against* NISBET.

IN an action betwixt E. Angus and Hugh Nisbet of Bagly for the double avail of the marriage, the LORDS found no process for the double, because the Earl appeared not at the day and accept the gentlewoman, notwithstanding that Bagly, at the time of the assignation of the diet, did not answer that he would come.

No 18.

*Fol. Dic. v. 1. p. 567. Kerse MS. fol. 114.*

1618. January 13. HOME *against* HEIRS of Thornydikes.

IN an action of marriage pursued by Home of North Berwick *contra* the Heirs of Thornydikes, the LORDS found, the avail of the marriage of Adam French of Thornydikes, who deceased, married of fifteen years of age before the apprising of the ward, to be real, and so follow the ground.

No 19.

*Kerse, MS. fol. 114.*

1618. January 24. A. *against* B.

IN an action of marriage, the LORDS repelled this exception, that the party was yet content to marry, both anent the single and double avail; but the LORDS found, that he could not pay the double while he was married.

No 20.

*Fol. Dic. v. 1. p. 568. Kerse MS. fol. 114.*