

1678. *February 21.* SIR ALEXANDER BRUCE of BROOMHALL *against* STEWART of INNERNEYTIE.

SIR Alexander Bruce of Broomhall, as donatar to the marriage of Stewart of Innerneytie, pursued him for the double avail of his marriage. The defence was,—That he was not required to marry till they knew he was contracted to another gentlewoman; and then *dolose* they required him when engaged: which was fraudulent; and Craig, *Tit. de Maritagio, pag.* , tells us, *Omnia fraus et dolus abesse debet*. This the Lords found relevant; it being also offered to be proven, that the gentlewoman offered was, at the very time, upon the tryst of another marriage, and *de facto* was married within twenty days after the requisition; and that she had passed through Broomhall and Mr D. Dewar's hands. This did not so much move the Lords, as that Innerneytie has paid 25,000 merks before, as the single avail of this same marriage; the highest modification has been made in Scotland of a gentleman's marriage. This consideration had some influence on the Lords' decision.

*Advocates' MS. No. 728, folio 320.*

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1678. *February 26.* JOHN ORMISTON *against* WILLIAM ANCRUM.

JOHN Ormiston, in Kelso, pursues William Ancrum to remove from lands, before the Sheriff of Roxburgh.

He raises an advocation on this reason,—That he likewise stands infest in the lands, and so there will arise a competition on double heritable rights, to which the Sheriff cannot be judge competent.

ANSWERED,—Though the Sheriff was not competent to judge the validity of double infestments, yet here we were not in that case; because this Ancrum was the disponer of the wadset to Turner, who had assigned it to Ormiston, and so he could never quarrel it.

Yet Craigie advocated the cause, because the wadset contained a back-tack, that Ancrum should possess upon paying the annualrent: notwithstanding, I alleged it was under a clause irritant that the back-tack should be *ipso facto* null and expire, if two terms did run in the third unpaid; which he repelled, because the failyie was not declared: but he allowed me to convert my action into a declarator of the failyie, for not paying the back-tack duty, and therefore that he ought to remove; and ordained Ancrum to answer thereto *hoc ordine*, without any other formality.

*Advocates' MS. No. 731, folio 321.*

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1678. *February.* The EARL of WINTON *against* Jo. HOPE of HOPETON.

THE Earl of Winton charges Jo. Hope of Hopeton to perform the deeds contained in his bond: he presents a bill of suspension upon performance of some, and retention for the feu-duties, the rests, and some acres in the rental: to which see our answers.

*Advocates' MS. No. 732, folio 321.*