

the other 200 merks charged for ; upon production whereof, the pursuer declared that he was likewise content to restrict his summons to the 800 merks specified in the said decret of suspension. And for proving the passive titles against Mr. William Chalmers, he produced the extract of his father's testament, duly confirmed by the Commissary of Murray, decerning also the said Mr. William executor to his father.

ALLEGED by the defenders' procurators, that no process could be granted against them at this pursuer's instance, because in May 1659, there was a condescendance and minute made betwixt the said defenders and Collie, by which they were obliged to infest him in an annualrent effeiring to the sum of 800 merks, contained in the decret of suspension, out of the lands of Ashogle: by which destination the sum was made heritable ; and so could not fall under escheat, and consequently, neither pertain to this donatar nor his cedent. Whereunto it was replied by the pursuer's procurator, that the allegiance ought to be repelled, because there was no such condescendance produced ; likeas, although the same had been produced, yet could it not have been respected, because if any condescendance was betwixt thir defenders and the rebels, the same was long after the rebellion, he being rebel in 1656, and the condescendance being in 1659 ; and, therefore, done in defraud of the fisk ; and so could neither prejudge the king's donatar, nor the donatar's assignee.

The Lords repelled the allegiance, in respect of the reply, and decerned the defenders to make payment to the pursuer of 800 merks ; assoilyie them as to the 200.

*Act.* James Abernethy.     *Alt.* Thoirs.

*Signet MS. No. 41, folio 14.*

1663. *December 16.* CHRISTIAN LEVINSTONE, Viscountess of Oxenford, *against*  
ROBERT, Viscount of Oxenford.

THERE is a contract of marriage passed betwixt Sir James M'Gill of Cranston-Riddell, Knight Baronet, one of his Majesty's Senators of the College of Justice, and Christian Levinston, second lawful daughter to William Levinstone of Kilsith, procreated betwixt him and Margaret Ramsay, his spouse. In this contract my Lord Oxenford (afterwards so,) binds and obliges him to infest his future spouse, in her pure virginity, before the completing of the said marriage by charter and seasing, *titulo oneroso*, in an annualrent of 2400 merks, to be uplifted by her, during her lifetime, out of the lands of Pentcaitland ; which is declared to be to her in contentation and satisfaction of all terce and third that she might crave, suit, or claim of any lands, heritages, mills, &c. pertaining to him the time of his decease. My Lord Oxenford dies in May, 1663. In his testament he nominates his son his sole and universal legatar and executor ; nominates Sir Ja. Richison of Smeton, David M'Gill of Rankellor, Sir Ja. M'Gill fiar thereof, and Mr. Ja. M'Gill, minister at Largo, tutors. The Viscountess has eight or ten weeks to go of a posthumous child after my Lord his decease. She, upon her bond, from the tutors, obtains L.30 sterling, for de-

fraying some necessary charges of the family. Then Robert, son and heir, retours himself heir to his father. After which, she immediately intents action against him and his curators (tutors) for their interest; making mention, that where, by the law of the kingdom, she has good and undoubted right to the third of all her husband's moveables at the time of his decease, the inventory whereof, according to his confirmed testament, amounts to L.65,181 of free gear, debts deduced; the just third (and so her part,) whereof is L.21,730, 7s. 6d. *Item*, that where by the common law and the laws and practise of this realm, conceived in favours of ladies liferenters, that whatsoever expense or charge the said ladies shall be at from the decease of their husbands, on themselves, families, children, or servants, till such time as they shall be put in the actual and real possession of the conjunct fee lands provided to them in liferent by their husbands, that the same shall be refunded, satisfied, and paid to the said ladies, by the heirs and executors of their husbands, according to the condition and quality of their persons, at the sight and modification of the Lords: But so it is, that the said pursuer has been at all these expenses since her husband's decease, which was in May last, which she cannot value to less than 4000 merks, especially considering her lying-in during the said space: *item*, for maintaining George, Mary, and Margaret M'Gills, her children, during the said space; whose entertainment and maintenance Robert, Lord Oxenford, by a bond of provision granted in their favours, obliged him to defray till their age of seven years; she craves, therefore, 1400 merks as a reasonable allowance for the same. She summons him, therefore, and his curators, to hear and see it decerned that the third of the whole moveables belong to her; *item*, to make payment of the same to her; *item*, to refund her charges expended on her family since her husband's decease, &c. For instructing the summons, her procurators produce an extract of her son's retour and service to his father; then a faithful inventory, (made by the deceased himself,) of her husband's goods and gear owing to him and by him; then the confirmed testament, wherein her son is only executor nominated. For the defender, there is produced his father's contract of marriage, before deduced.

All which being well and ripely considered by the Lords, they decerned Robert, Viscount of Oxenford, to make payment, to his mother, pursuer, of the sum of 3000 merks, as their modification of what she craved, for the expenses bestowed by her on the family, from the time of her husband's decease till Whitsunday last; as also for her charges debursed during the time of her lying-in of the said posthumous child; and this by and attour all provisions that were in the lodging, the time of her husband's decease. With this *proviso* always, that in the first end of the said 3000 merks, she shall allow the L.30 Sterling borrowed by her from her son's tutors; they redelivering her her bond thereof, to be cancelled by her, or otherwise used at her pleasure. *Item*, Decern and ordain him and his tutors to content and pay to his mother 300 merks, modified by them, for entertainment already given by her, during the said space, to his brother Robert. *Item*, 400 merks, for the maintenance furnished by her to his two sisters. And thus the Lords decerned: albeit it was alleged, the time of the dispute, by the defender's procurators, that there could be no process sustained, at the said pursuer's instance against the defender and his tutors, for aliment of the family, because, *Imo*, The said pursuer was abundantly provided; *2do*, No aliment can be allowed for sixteen servants,

(as she libels there were,) because the said defunct died twenty days before Whitsunday, and so the lady might easily have dismissed her servants; *3tio*, Offers to prove that the house was furnished, the time of his death, with all necessaries of malt, meal, and others. To which, replied, *1mo*, That the lady being so near her time of delivery, she could not dismiss her servants conveniently, till after the same. *2do*, Whatever provision was in the said house, the time of the defunct's death, it fell all under executry, so that she might not meddle therewith. And as to the third of moveables craved by her, (concerning which the Lords decerned nothing yet,) it's alleged by the pursuer's procurators that, by her contract of marriage, she has accepted a provision in lieu of all thirds or terces she might acclaim; and so was excluded from a third of the moveables; and craved to be heard thereon *in presentia*. Who having been heard thereupon, the Lords found that the pursuer was not excluded from a third of the moveables, by the said contract of marriage; and, therefore, ordain the said parties to count and reckon, one with another, concerning the said third of the moveables acclaimed by her: and for that effect, nominate my Lord Halkerton, one of their number, to be auditor of the said counts, giving him full power and commission to choose a clerk, for whom he will be answerable therein; *Item*, to hear all said and proponed *hinc inde*; to examine witnesses, to see what sums of money pertained to the defunct, the time of his death, that she may have a third thereof; to direct forth precepts for summoning of them; to settle and agree the said parties if he can; if not, to report his diligence in February coming: and to this effect, they are ordained to attend at what diets he shall appoint them; of all which they are to be warned *apud acta*.

*Act.* Mr. Robert Sinclair, Sir Thomas Wallace, Mr. Jo. Cunyghame. *Alt.* Sir George Lockart, Mr. Geo. Norvell, Mr. Geo. Mackenzie.

*Signet MS. No. 42, folio 14.*

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1663. *December 17.* The MINISTER and KIRK-SESSION of North-Berwick *against* SIR WILLIAM DICK'S Creditors.

MR. ARCHIBALD TURNER, minister at North-Berwick, obtains decret *in anno* 1657, against the heritors, feuars, life-renters, and other parishioners of the lands of North-Berwick; by which decret, a church is ordained to be built at the said town of North-Berwick; and the place where it and the kirk-yard thereof should be, are also designed: to which effect they ordain the said lands and ground destined for that use, to be valued, rated, estimated, and approven by some indifferent persons appointed by the said commissioners for that effect, granting them commission for that effect; then ordain the heritors and proprietors of the said ground, designed for the said end, to denude themselves in the most effectual way that can be of the law, in favour of the rest of the heritors and parish of North-Berwick, and their successors: *item*, decern them, on their denuding themselves, to accept such prices as the commissioners appointed shall value their land at, to be paid them by the present heritors of the said parish, or those to come. *Item*, ordain the heritors foresaid, to convene themselves at such certain