

Menzies had done, Pitlurg was *in mala fide* to purchase these lands thereafter, unless there had been a new subscribed offer, and duly intimated *ut supra*.

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1703. *November 13.* A CREDITOR of KER of LOCHINCHES *against* MARY KER, his Relict.

A CREDITOR to Ker of Lochinches pursues Mary Ker, his relict, on the passive title of intromitter, for payment of his debt.

ALLEGED,—Any intromission she had was by virtue of a disposition from her husband to his haill moveables. And the disposition being now produced, it was

OBJECTED,—That the same bore not to be for implement of the provision contained in her contract of marriage, but purely for love and favour; and so was *donatio inter virum et uxorem*, and could not prejudice a lawful creditor, and should have been confirmed before her intromission.

ANSWERED,—She only used the disposition to connect it with her contract; and whatever was its narrative by mistake, yet truly it depended upon the antecedent onerous cause of her matrimonial provisions, and must be drawn back *ad suam causam*, to support her contract.

The Lords found the disposition a sufficient title to purge vitiosity, so as not to be universally liable; but found she behoved to pay him *usque ad valorem* of her intromission, seeing they could not redargue so plain a narrative, nor turn it to be onerous, against its express words; and that she ought to have confirmed herself executor-creditor on her contract of marriage and disposition. Yet see *Stair, 26th January 1669, Chisholm against Lady Brae*; where the Lords sustained a tack to a wife as a remuneratory donation to make up the defects of her contract of marriage, though the tack bore only love and favour. But the Creditor's case was more favourable here, that the Lady Lochinches was in peaceable possession of her jointure-lands; and the Creditor did not quarrel her on that head, but only for her superintromission; which she ascribed to a clause of conquest in her contract-matrimonial. But the Lords found her liable, in so far as her intromission exceeded her jointure, on the grounds aforesaid.

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1703. *November 18.* SIR WILLIAM BINNY of VALLEYFIELD, *against* SIR ALEXANDER BRAND of BRANDSFIELD.

TILlicouLTRY reported Sir William Binny of Valleyfield against Sir Alexander Brand of Brandsfield. The said Sir William and Alexander entered into a tripartite contract with Sir Thomas Kennedy, *in anno 1693*, for buying 5000 stand of firelocks to the Government; by which bargain they had £1500 sterling of net profit. On this agreement Sir William charges Bailie Brand for £500 sterling as his third part of the said profit; who suspends, on thir reasons: *1mo.* That the said contract was found defamatory at Privy Council, against two noble persons therein named, and so cannot be the foundation of a charge now; *2do.* It is null as wanting witnesses, and not designing the filler up of the date, which,