

a garden or Orchard as Portinent of a Tower Fortalice or Maner, designed more for Pleasure than Profit eodem, sic inter eodem. In the Opinion of our Lawyers (Craig Feud. Lib. 2. Tit. 22. §. 10. vers. In 180 dicit. Stair Lib. 2. Tit. 6. §. 16. vers. If the Feud & §. 17. vers. Craig pro-
 -solk. A Force is due to a Widow the her Husband died not Feud in the
 -vix. 1^o If he infeft his apparent Heir in his whole Estate, without
 a Liferent to his Wife. 2^o If a Man obliged in his Son's Contract of
 to infeft him in the Fee of Lands, neglect to do it, and the Son's Heir
 no other ways provided. 3^o Where the Husband dolece or negligently
 infeft himself in Lands belonging to and possessed by him as appa-
 For that in the first Case the apparent Heir's Infeftment, or any gratuitous
 Disposition from the Husband reserving his own Liferent, would be held as
 fraudulent and elusory of the Obligation upon him to provide his Wife
 in the second Case, the Husband's Failure not performing his Obligation, is
 so liable to the Construction of a sinister Design to defraud his Son, is
 to be the third Case, tho' the apparent Heir before he had entered, can no more affect
 his Heir with voluntary Provisions to his Wife, than he can burden it with
 Debt: Yet it is liable to the legal Provision of a reasonable Force to his
 Heir; who is not otherwise sufficiently provided; since the naked just appa-
 -the intitled the Husband, to all the Fruits during his Life. But yet no Force
 was found due to a Relict ~~out of~~ out of Lands where her Husband
 died not infeft. Albeit it was alleged, that the Husband's Omission to infeft
 himself in these Lands was of Design to defraud his Wife of a competent
 In respect dolus non praesumitur, et culpa caret qui jure suo utitur. 29
 1706 Caruthers and L. Carrileugh contra Johnston of Elshields. So the
 whether the Husband forbore to take Infeftment, because the Superior refused
 receive him, or for that he wanted Money, or intended to sell again and assign
 the Procurators and Precepts, or thought his Wife had Sufficiency for
 besides & his Omission could not in Law bear the Construction of either Fraud
 or Fault: Especially considering, that a Debtor's Debt, and much less his Omi-
 -tion, falls not under the Act of Parliament. 1621 ancient Bonds, who
 there is a separate Fund to pay the Creditors.

The Relict of a Person, whose Estate stands already affected with a Force
 to his Predecessor's Widow, can claim only for her Force, a Third of two Thirds
 of the Estate called upon that Account, the lesser Force. But after the first
 -cidit esse. Stair Feud §. 16.

Force extends not to Lands within Burgh or halgon Burgage, 23 Feb.
 1665 Jack contra Pollock and Rutherford Craig Feud. Lib. 2. Tit. 22. §. 11.
 Stair Lib. 2. Tit. 6. §. 16. Thus a Widow was ordained to remove from a House
 and to cede the Possession thereof to the Heir, albeit she was served and
 -kenned to a Force of that House, and possessed the same pro indiviso with
 the

the Heir who had Right to two Thirds: because majus trahit minus, ⁱⁿ
 where the House is unum indivisibile unum mentum. Altho' the sentence,
 pro indiviso, is relevant against such as can obtain a Division, and
 are to blame that they do not first divide before they purgare Re-
 -moving. But then if the Heir did not dwell in the House himself,
 she, if willing to pay the like Rent for it as others, and to find Cau-
 -tion for the two Parts, was to be preferred to all others 26 January 1665
 Logan contra Galbraith. Nor is Force extended to Feud Dutys or other
 Casualties of Superiority 13 Feb. 1620 Lady Dumfermling contra la. Earl
 her Son. Nor yet doth a Force take Place in Reversions Leases & Put-onay.
 Craig Feud. Stair Feud. McKenzie Inst. Lib. 2. Tit. 9. §. 43. A Force is due
 only out of the Profits of Lands above Ground, and not out of any Profits un-
 -doot Ground, except in so far as needful for her own private Use, spots wood
 Dralt. Tit. Force. So a Lady was found not to have Right to the Profit
 of a Coal-Heugh within Lands, to a Force whereof she was intitled, but
 only to so much as might suffice for her own Use 17 Feb. 1620 Lady La-
 -mingtoun contra L. Lamingtoun. Nor doth a Force intitle to a Share in
 Bonds bearing Annualrent containing a Clause of Infeftment, if no In-
 -feftment followed 24 June 1663 Springeour contra Murrays. For by our
 ancient Custom, it reached only Heretage belonging to the Husband the
 Time of the Marriage, and now is a Third ^{only} of what he stood infeft in Fee
 of at his Death.

A Force is established by the Service of an Inquest of 15 sworn Men,
 called by the Judge-ordinary where the Lands lie, upon a Brief or Precept
 out of the Chancery directed to him, of the Tenor following. Vicomiti &
 -salutem. Mandamus vobis et precipimus, quatenus dilectae nostrae B. quon-
 -dam A. latrici presentium, haberi faciatis rationabilem tertiam partem
 suam de omnibus et singulis terris et annuis redditibus eam pertinenti-
 -bus, quas et quas de nobis tenent in capite, et de quibus obijt ultimo ves-
 -titus et sasitus ut de Feodo: Tantum inde facient quos pro vestro defectu am-
 -plius inde justam quærimoniam non audiamus. Teste meipso apud Ec. It
 is not necessary to cite the Heir to the serving of this Brief. The Inquest are
 to try 1^o If the Bearer was lawful Wife to the deceased Heir. 2^o If the
 Husband died infeft as Feud in such Lands &c. In which Inquiry they pro-
 -ceed according to Instruction of held and reputed, viz. that she was held and
 -reputed or past for a lawful Wife without any Quarrel about her Marriage
 in the Man's Lifetime Act 77. Par. 6. §. 4. And that he is reputed to have
 died about such a Time heretable Possessor of the Lands in Question Craig
 Feud. §. 11. vers quod ad secundum. Stair Lib. 4. Tit. 3. §. 11. The reason why no
 Exception can be summarily received to stop the Service to a Force in
 Favour of her who was esteemed lawfully married, is because Marriage is