

No 20.

man for a sum of money, she marrying with his consent, the Lords decerned him to pay the money, though she married without it.

sion, that they sould marry, with the advice of Mr Peter Sandilands, or failing of him, be the advice of the said Laird of S. It was *answered*, That the said sisters could not acclain be this obligation, because they had married themselves by the advice of the said Mr Peter and the said Laird, expressly against the tenor of the said obligation. To this was *answered*, *quod de jure, matrimonia debent esse libera*, and that there was no bond or obligation that could hinder or restrain the liberty of marriage to them. To this was *answered*, That the clause of the obligation was not to stop the liberty of marriage, but rather to further the same; that was, the young gentlewomen should use the counsel and advice of their friends and parents in their marriage. THE LORDS, notwithstanding, decerned S. to fulfil the contents of the obligation; and that the same was nothing against the liberty of marriage.

Fol. Dic. v. I. p. 189. Colvil, MS. p. 267.

1617. July 16.

KENNOWAY against CAMPBELL.

No 21.

IN a supension raised by Mr Patrick Kennoway *contra* Campbell, his wife's sister's daughter, to whom he had promised 500 merks if she married by his advice, the LORDS found the letters orderly proceeded, notwithstanding it was *alleged*, that the promise was conditionary, if she married with his consent.

The contrary hereof decided 16th December 1629, betwixt Hume and Hume, (*infra*).

Fol. Dic. v. I. p. 189. Kerse, MS. fol. 47.

1629. December 16.

HUME against Her TENANTS.

No 22.

A tack was granted, to be void if the tenant's daughter married without the landlord's consent. Found, that this consent must be express in order to validate the tack; and silence at the marriage, and future good correspondence were not sufficient to infer consent.

AGAINST a removing the defenders *alleging* a tack set by the pursuer's husband and herself; and the pursuer *replying*, that it bore a condition, 'That if the defender's daughter married without her husband's consent, the tack should be null;' this reply was received *hoc ordine* without declarator, which was not found necessary to precede, as the defender alleged; neither was it found necessary that the pursuer should qualify, that he disassented from the marriage of the daughter to her husband, with whom she was married; but to purge the condition, and for maintaining of the tack, the defender was holden to prove that he gave his consent, which if he could not qualify, the tack could not subsist, being set with that provision; and it was not sustained as sufficient, that the person whose consent was required was now dead, and that he lived many years after the marriage, and never exprest his dislike and dissent; and their bands were publicly proclaimed, and not opposed by him, and that after the marriage, he contracted with them in sundry bargains, which all the de-

fenders *alleged*, ought now to be found as good as an express consent, after intervening of 25 years and more, and that long possession by the tack since, during which space it was never quarrelled by the husband of this pursuer, which allegiance was repelled, and the express consent required.

No 22.

Act. *Craig*.Alt. *Belsbes*.Clerk, *Gibson*.*Fol. Dic. v. I. p. 189. Durie, p. 474.*1663. *January 8.*GORDON *against* The LAIRD of LEYES.

SIR THOMAS BURNET of Leyes (now deceast) gives a bond of 9000 merks to Margaret Burnet his daughter; of which bond, she and John Gordon of Brachlie her spouse, pursue exhibition and delivery against this Laird of Leyes, and Mr Robert Burnet advocate haver. It was *alleged*, That the bond is conditional, that she should marry with consent of the Laird of Leyes for the time; but so it is that she married without consent of Leyes, or any of her father's friends; 2. That by an agreement after the marriage in writ, her husband and Leyes condescended upon a lesser sum in satisfaction of the said bond, and so the bond is innovate and taken away. It was *answered* to the *first*, That *matrimonia sunt libera*, and such conditions should be holden *pro non adjectis*, as has been often found; and that the first bond is acknowledged by the second agreement. And as to the said agreement, and allegiance founded thereupon, it was *answered*, it was conditional, if the sum condescended on were punctually paid at Whitsunday 1661, the former bond should stand in force. It was *replied*, That the condition resolved only in a failzie, which the defender might yet purge, considering especially the time and scarcity of money, and that the said Margaret had so far miscarried against her friends; and the bond was never a delivered evident, but put in her uncle's hand to be furthcoming to her, if she should carry a-right.

No 23.
Marriage being free, the Lords refused to sustain conditions and limitations regarding it, adjected to bonds of provision to daughters.

THE LORDS found the second allegiance or reply relevant, and that the defender might yet purge. See IRRITANCY.

*Fol. Dic. v. I. p. 189. Gilmour, No 60. p. 43.*1672. *February 22.*FOWLIS *against* GILMOURS.

IN a declarator pursued at the instance of Dame Margaret Fowlis, relict of Sir Andrew Gilmour, againt Alexander Gilmour, eldest son to Sir John Gilmour late Lord President of the Session, and Annes Gilmour, his sister, upon this ground, That Sir Andrew having disponed, in favours of Margaret Gilmour his only daughter, his whole estate, which he then had, or should acquire, with this provision, that in case his daughter or her children should decease be-

No 24.
A wife being substituted by a husband to a provision left to a child, in case of the child's death.