

to put upon this clause is without any foundation, and could not be the intention of the contracting parties.

No 18.

THE LORDS, on the 25th February 1761, 'found, that, according to the intendment of the contract of marriage betwixt Walter Scot and Bessy Scot, in the year 1666, the provisions to the daughters of the marriage, though inaccurately expressed, were only to take effect in the event of there being no heir-male of the marriage who should take the estate in virtue of the contract of marriage; and, as there was an heir-male of the marriage who succeeded to the estate, and lived to the year 1750, found the provisions to the daughters never became due; and therefore assoilzied, and decerned.

Upon a reclaiming petition and answers, 'the LORDS adhered.'

Act. *Ferguson.*Alt. *Lockhart.*

J. M.

Fol. Dic. v. 3. p. 157. Fac. Col. No 39. p. 78.

1793. December 10.

OLIPHANT *against* OLIPHANT.

No 19.

AN heir under an entail, which contained a reserved faculty, of providing younger children to a certain extent, having exercised that faculty to its full extent, by granting a bond of provision in favour of two daughters, then his only younger children; afterwards married again, and died without making any alteration on the bond of provision. A posthumous child being born of this second marriage, the LORDS found the child entitled to her share of the bond of provision.

*Fol. Dic. v. 3. p. 158. Fac. Col. No 63. p. 138.**** See The particulars, *voce* IMPLIED WILL.

SECT. II.

Condition of Marrying with Consent.

1758. December 12. CULLERNIE *against* LAIRD of ST MONANCE.

THE Laird of Cullernie pursued the L. of St Monance in name of his sisters, upon his obligation for the soume of L. 500, in the whilk obligation S. was obliged and bound to give the said soume to Cullernie's sisters, with this provi-

No 20.

A person having given a bond to a wo-

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 suspension 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 conditional, 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-