

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 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-