

decerned, and declared accordingly : But repelled the reasons of reduction and defences against the bond granted to Mary Burton Hamilton ; and decerned.”

No 22.

Act. *Ilay Campbell.*Alt. *Lackhart, Crosbie.*

G. F.

Fol. Dic. v. 4. p. 26. Fac. Coll. No 11. p. 218.

S E C T. VI.

*Pactum contra Fidem Tabularum Nuptialium.*1577. *January.*TURNBULL *against* HEPBURN.

No 23.

THERE was one Turnbull, a young man, who, by the advice of his friends, and being interdicted, contracted himself in bond of matrimony with a young woman called Hepburn. The young man thereafter being otherways pursued, refused to fulfil the bond of matrimony with the said woman ; yet had he before, by reason of his ardent love that he had to the woman, given an acquittance of 400 merks, granted to have received the same, in name of tocher good. He thereafter desired to see his acquittance decerned to have no effect, because non secutum fuit matrimonium, et non secuto matrimonio stipulatio dotis evanescit.—THE LORDS decerned it to be referred to the party's oath, if there was any real enumeration of silver made, otherwise the acquittance to be of no avail.

*Fol. Dic. v. 2. p. 22. Colvil, MS. p. 262.*1633. *December.*HEPBURN *against* SETON.

No 24.

SOME part of the things prestable on the bridegroom's father's side, viz. to possess his son in a certain number of chalders of victual, being remitted by the bridegroom himself on the very day of the contract, by a private transaction between his father and him ; this was found contra bonos mores et fidem tabularum nuptialium ; and, therefore, declared null.

1634. *January 15.*—BUT the son, long after the marriage, having voluntarily come to his father, and promised to adhere to the former bargain ; the

No 24. LORDS, in regard he prejudged none thereby but himself, and that his promise could not bind his wife, found this relevant to be proved by his oath.

Fol. Dic. v. 2. p. 21. Spottiswood.

* * * This case is No 71. p. 8959. *voce* MINOR.

1665. June 30.

KENNEDY against AGNEW.

No 25.

The Lords refused to reduce a bond granted by a son, without the knowledge of his father, to his father-in-law, for diminution of the tocher, because the sum was small and the lesion inconsiderable.

ANDREW AGNEW, Younger of Lochnaw, granted a bond for L. 1000 to Thomas Hay of Park, his father-in-law, which being assigned to Thomas Kennedy of Kirkhill, he charges young Lochnaw; who suspends, and intents reduction, with concurrence of Sir Andrew Agnew, his father, upon this reason; that the said Andrew having married Park's daughter, Sir Andrew did provide his son and her to a competent provision, and the heirs of the marriage also, for which, in name of tocher, Park was obliged to pay Sir Andrew L. 10,000, this being a solemn contract of marriage, Park did most fraudulently, *contra bonos mores*, without the privacy or consent of Sir Andrew, procure this bond from his son-in-law, the time of the contract, there being nothing treated thereof betwixt the parents. It was *answered*, That the reason is noways relevant; because, Park having given a considerable tocher with his daughter, for which the provision was made by Sir Andrew to his son, it was lawful for Park to take a bond for so small a sum, being only the tenth of the tocher, and which was only payable after his wife's death, wherein no circumvention was used, nor enorm lesion to the granter.

THE LORDS, in respect of the meanness of the sum and small lesion, assoilzied.

Fol. Dic. v. 2. p. 22. Gilmour, No 153. p. 109.

* * * Stair reports this case.

1665. July 27.—KENNEDY of Kirkhill, as assignee by Thomas Hay of Park, to a bond of L. 1000, granted by Andrew Agnew, Younger of Lochnaw, charges him thereupon, who suspends, and raises reduction on this reason, that the bond was granted at the time of his contract of marriage, clandestinely, without the knowledge of his father, who was contractor, *contra pacta dotalia, et contra bonos mores*. The defender *answered*, That he having given a very great tocher, *viz.* L. 10,000, above his estate, which is all paid to his good-son's father, he did declare, that he was not able to give so much, and thereupon he got this bond, not to have execution till after his death, which he might lawfully do, having given a tocher suitable to the condition of the receiver, and above the condition of the giver.