

tent and pay to her at her perfect age of fifteen years; the cause of it is love and favour, and for her maintenance. This bond she assigned, and dies before she attains to the age of fifteen. Her brother, now Viscount, being pursued to pay the sum, it is excepted that the bond pursued upon is null, in so far as the existency of the debt depended upon a condition which failed, viz. her attaining the age of fifteen years, so that before that time *nec cessit nec venit dies*, and it being *dies incertus* it must be held for a condition. ANSWERED,—That the adjecting the term of fifteen years is only *causa differendæ solutionis*, but noways to suspend her right to the sum till it should appear whether that condition existed, yea or no.

The Lords found the bond conditional and null, because it never existed. See something like this in the information, *Sir William Stewart contra his brother Garntully*, (see Nos. 9, 420, and 492,) about the bond given to their sister payable at her marriage, and who died unmarried. *Vide l. 213. D. de V. significatione; item totum T. D. Q. dies ususfructus legati cedit.*

*Advocates' MS. No. 148, folio 92.*

See 25th February, 1681, *Gordonston*.

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1671. February 23.

PROOF by WITNESSES.

IN an action for making up the tenor of a lost contract of marriage, for adminicling the wife's liferent provision in that contract, there was produced a charter and seisine relative to a contract of marriage of such a date: this was found sufficient for instructing the contract in that part; but when they came to make up to the provisions in favours of the bairns of the marriage, they had no other way but by offering to prove by the writer and witnesses in the contract that they were such as they did condescend upon, which being but a small competency, and noways unsuitable to the father's quality, this manner of making up behoved to be received. Against which it was ALLEGED,—That this were a most dangerous preparative to make up a writ by witnesses, though they be the witnesses insert, where there are no adminicles in writ that can be adduced for making it appear that ever there was any such writ. REPLIED,—That they have adduced adminicles in writ for making appear there was such a contract, and that by it the wife was provided in such a jointure; and all contracts having clauses of provision in favours of the bairns, which provisions are offered to be proven *per testes instrumentarios*, ye cannot divide the contract so as to stand *pro parte* and fall *pro altera parte*, especially they being noway exorbitant.

The Lords found it might be made up by the witnesses insert.

*Advocates' MS. No. 149, folio 92.*