

defined what he considered as a reasonable provision, this was not to be defeated by the adjecting of an unreasonable condition.

No 38.

It was also considered as a circumstance of importance, that the codicil was not communicated to the daughter before the marriage. But little stress was laid upon the *misnomer* above mentioned, though founded on by the pursuers.

THE LORDS reduced the codicil.

Reporter, *Lord Dreghorn.* Act. *M. Ross.* Alt. *Abercromby.* Clerk, *Home.*
S. *Fol. Dic. v. 3. p. 160. Fac. Col. No 205. p. 431.*

* * This cause was appealed, and the HOUSE OF LORDS reversed the judgment of the COURT of Session.

SECT. III.

Condition, whether to be understood Copulative or Disjunctive.

1677. January 11. BAILLIE against SOMMERVILL.

No 39.

THERE being a provision in a contract of marriage in these terms, that 5000 merks of the tocher should return to the father-in-law, in case his daughter should decease before her husband, within the space of six years after the marriage, there being no children betwixt them then on life; and in case the father-in-law should have heirs male within the space of six years after the marriage;

THE LORDS found the said provision copulative; and that the tocher should not return, albeit the father-in-law had heirs male within the foresaid time; seeing the other member of the said condition did not exist; in respect, albeit his daughter deceased within the said time, yet she had a child of the marriage that survived.

Reporter, *Gosford.* Clerk, *Hay.*
Fol. Dic. v. 1. p. 191. Dirleton, No 423. p. 210.

1712. July 17.

DAME RACHEL NICOLSON, Lady Preston, against DR GEORGE OSWALD of Preston.

SIR THOMAS HAMILTON of Preston having infest Dame Rachel Burnet, his Lady, in an yearly annuity of 1200 merks out of his barony of Preston; in a

No 40.
A Lady renounced her jointure, with