

and particularly is decided 1669, the Lady Hume against her Tenants, No 22. p. 2964., where the LORDS found that knowledge and silence, and no dissent expressed for the space of 25 years was not sufficient, unless positive consent had been obtained and proven; and 17th January 1673, Rae against Glass, No 25. p. 2966., where the LORDS found that there was no necessity for the parties to condescend upon the reasons of their dissents; and the 13th February 1680, the Laird of Buchannan against Elizabeth Buchannan, No 26. p. 2968., where, albeit it was offered to be proven that Buchannan was not *sanae mentis*, and had declared that he would consent to no other marriage with his daughter but George Grant; yet, the LORDS found a bond of provision, bearing, that quality was null, in respect his daughter had married without his consent, albeit the person she matched with, was a suitable match. THE LORDS found it relevant to annul the disposition, the provision in the disposition that she should not marry without consent of the person therein mentioned, to be proven by her oath; and if she acknowledge the same, found the answer relevant, that she required the persons by whose advice she was appointed to marry to give their consent, and that they refused to give a reason why they would not consent to the marriage.

Fol. Dic. v. I. p. 189. Sir Pat. Home, v. I. No 186.

1687. June 9.

CAPTAIN JOHN DALZIEL and CHRISTIAN ELIES *against* SCOTSTARBET, &c.

CAPTAIN JOHN DALZIEL and Christian Elies his spouse, having obtained a deliverance last Session to cause Scotstarbet, Livingston and me, to answer summarily to a declarator raised by them against us, to consent to their marriage, and to her disposition of her portion to him by her contract of marriage; or else that the Lords would declare her disposition valid without our consent; notwithstanding that, by her father's disposition, she is restricted to adhibit our consent;—THE LORDS, on a bill, retracted that deliverance, and ordained the process to be given out to see *in communi forma*; though he was a Captain in Holland, and his forelooff expired; because, whatever the Lords might appoint against me, as a member of the session, (and yet this is not *in actu officii*.) yet they could not deny the rest the usual *inducia deliberatoria* of seeing in common form *et via ordinaria*.

No 30.
Found, that a lady had right to her tocher, although she had not obtained the consent of certain persons named by her father.

July 6. 1688.—The declarator pursued by Captain John Dalziel and Christian Elies, his spouse, against Scotstarbet, &c. mentioned 9th June 1687, being advised; the LORDS find that she has right to the tocher, notwithstanding the friends named by the father have not consented to her contract of marriage; and the LORDS supplied their consent; but found she must provide it in the

No 30.

terms of her father's tailzie ; so that failing of heirs of her body, and her sister Elizabeth, it goes to the other substitutes ; so that her husband could not break nor alter it. He reclaimed against this, that he might have the power of disposal upon it.

Fol. Dic. v. I. p. 190. Fountainhall, v. I. p. 454. 510.

No 31.

Found, that a brother not giving consent to his sister's marriage, which consent, by her father's appointment, she was bound to obtain, under an irritancy of losing part of her portion, did not infer the irritancy, unless he gave a reason for his dissent.

1688. July 20. PRINGLE and RUTHERFORD *against* PRINGLE.

ELIZABETH PRINGLE, and Rutherford her husband, pursuing Pringle of Symington, her brother, for her portion, he repeated a reduction upon these grounds ; *1mo*, That some of the bonds assigned to her were heritable, and the assignation by her father was *in lecto*, at which time he could not prejudice his heir ; *2do*, That she was obliged to marry with his consent, else 2000 merks was to return to him.—*Answered* to the *first*, He was her tutor, and granted discharges of the annuals of these sums *tutorio nomine*, and so had homologated, and could not now quarrel it ; *2do*, He had accepted a disposition from his father, narrating this portion ; *3tio*, As to her marriage, the quality was not known nor intimated to her.—*Replied*, His acting as tutor did not preclude him, as is clear from § 4. *Institut. de inofficios. testament.*—THE LORDS repelled the reason founded upon death-bed, the charger proving that the suspender had accepted a disposition, which narrates the cause and occasion of the same to be the bonds assigned ; and find, that the suspender not giving his consent to the charger, his sister's marriage, does not infer the irritancy contained in the assignation, of applying 2000 merks of the said bonds to the suspender ; unless the suspender could give a reason of dissent ; for they would not allow him, upon the prospect of his own benefit, to deny his consent to every proposition of marriage made to his sister, because he hoped 2000 merks would fall in to him.

Fol. Dic. v. I. p. 190. Fountainhall, v. I. p. 512.

No 32.

A lady and her husband pursued for her tocher, contained in a bond of provision having this condition, that she should marry with consent of certain friends, otherwise the bond to be null. The marriage

1710. July 7. WILLIAM BUNTIN *against* ARCHIBALD BUCHANAN.

WILLIAM BUNTIN, son to the Laird of Airdoch, having married Jean Buchanan, daughter to Drummakill, he pursues Archibald Buchanan of Drummakill, her brother, for payment of 5000 merks contained in a bond of provision given to her by her father.—*Alleged*, She has forfeited her right, because the bond contains an express quality, that his daughter shall marry with the special advice and consent of George Lindsay of Blackshome, and John Cuninghame of Balcaldalloch, otherwise her bond to be void and null ; but so it is, she never required their consent ; but, on the contrary, they dissented ; and this tocher being a donation, it may be given with what qualities and conditions the donor pleases ; and if not obeyed, the quality ceases, *tot. tit. C. de donat. sub modo et*