

past fourteen years of age, pursued Thomas Alexander, who, as heir of line served to the disponent, had intromitted with the rents of the lands disponed, to pay to him the half thereof since the disponent's death.

*Alleged* for the defender; The pursuer hath no interest to call for the rents, the disposition being granted upon a suspensive condition, that he and Mary Alexander marry together; which can take no effect till the condition be fulfilled by their marriage.

*Replied* for the pursuer; No period of time being assigned for his marrying Mary Alexander, it must be understood in a rational and prudent sense, viz. when he should come to that maturity of age and habit of body which fits him for marriage; and he is most willing to marry her when in a capacity to do it. Now, it is not to be thought, that the disponent intended the mails and duties to remain with his heir until the pursuer were capable to marry; but that Mary Alexander and he should enjoy them *medio tempore* for their aliment and education.

THE LORDS found, that the pursuer had right to the half of the mails and duties of the lands disponed, since the death of the disponent; reserving, to their Lordships consideration, the import of the disposition, in case the pursuer should refuse or decline, when he comes to age, to accept of Mary Alexander for his wife.

*Fol. Dic. v. 1. p. 190. Forbes, p. 567.*

1750. June 6. & July.

SIR KENNETH M'KENZIE *against* The CREDITORS of Kinminnity.

WHERE a father, who is under a natural obligation to provide his children, qualifies a bond of provision to his daughter, with a condition 'of her marrying with consent of persons therein named,' the tocher will be due although she marry without their consent, without doubt, if the marriage be suitable: What the LORDS might do in the case of an unsuitable marriage would depend on circumstances. But, where a bond of provision is granted by one who is under no obligation to provide the child, under this condition, that she marry with the grantor's consent, then the condition is strictly interpreted, and the bond will be found null if she marry without his consent, be the marriage, in the opinion of others, suitable or not, as he is not bound to assign the reason of his dissent. And so far has this been carried, that even where a father, who had before competently provided his daughter, gave her an additional provision, which was to become void in case she married without his consent, the irritancy has been found incurred where she married without his consent, although the match was suitable. But where the consent required in the condition is not the consent of the grantor himself, but of other persons therein named, How far

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A person under no natural obligation to provide, granted a bond to a Lady, under the condition that she should marry with the consent *in writing* of the donor. She married without it, yet the bond was found due. But there were circumstances inferring approbation.

No 35. the irritancy will, in that case, take place, where they cannot give a reason for their dissent, may be a question.

What will import a consent, has on some occasions, been disputed; and there are cases, when the granter was under no obligation to provide, in which the Lords have found that nothing less than an express consent could validate the bond; that the person's being present at the marriage and his silence thereat, nay, that even his signing witness to the contract of marriage was not sufficient to infer that consent which was required by the condition of the bond, unless it had been specially mentioned and treated upon; which was carrying the matter too far, especially as no particular form of consent was, in these cases, required by the bond of provision.

It is more dubious where a particular form of consent is expressed in the bond; yet, so far have the Lords receded from the strict construction put upon the clause by the foresaid judgments, that, even in that case, they have found the consent implied from circumstances, although it had not been given in the precise form required by the bond.

Of this there was a strong instance in the present case, being of a bond of 4000 merks granted by Elizabeth Edwards, relict of Sutherland of Kinminnity, to Mary Sutherland, her husband's daughter of his former marriage, under a condition in these words: 'Declaring always, that the said Mary Sutherland shall be bound and obliged to marry with my consent, had and obtained thereto, *by a writing under my hand*; and, if she does in the contrary, or dies unmarried, then, and in these cases, the foresaid bond of 4000 merks shall fall, accresce, and belong to me.' Which bond the LORDS 'Found to be due,' although she married privately without the knowledge of the granter, in respect of certain circumstances, from which her approbation thereof was found to be inferred.

Whether these circumstances were rightly sustained or not; supposing equipollent circumstances sufficient to purify the condition of the bond; and upon which the Court was much divided, is not material to state, as a circumstantial case can be of little use as a precedent to any other.

N. B. It did not appear in this case, that Mary Sutherland, when she married, knew of the bond at all: Had she known of the bond, and the condition been concealed, it might have afforded an argument against the irritancy's being incurred; but as she knew nothing of the bond itself, and that the granter was under no obligation to acquaint her of it, the circumstance of her not knowing of the condition was thought to import nothing.

*Fol. Dic. v. 3. p. 158. Kilkerran, (CONDITION) No 1. p. 145.*