

fenders *alleged*, ought now to be found as good as an express consent, after intervening of 25 years and more, and that long possession by the tack since, during which space it was never quarrelled by the husband of this pursuer, which allegiance was repelled, and the express consent required.

Act. *Craig*.Alt. *Belsbes*.Clerk, *Gibson*.*Fol. Dic. v. I. p. 189. Durie, p. 474.*

No 22.

1663. *January 8.* GORDON *against* The LAIRD of LEYES.

SIR THOMAS BURNET of Leyes (now deceast) gives a bond of 9000 merks to Margaret Burnet his daughter; of which bond, she and John Gordon of Brachlie her spouse, pursue exhibition and delivery against this Laird of Leyes, and Mr Robert Burnet advocate haver. It was *alleged*, That the bond is conditional, that she should marry with consent of the Laird of Leyes for the time; but so it is that she married without consent of Leyes, or any of her father's friends; 2. That by an agreement after the marriage in writ, her husband and Leyes condescended upon a lesser sum in satisfaction of the said bond, and so the bond is innovate and taken away. It was *answered* to the *first*, That *matrimonia sunt libera*, and such conditions should be holden *pro non adjectis*, as has been often found; and that the first bond is acknowledged by the second agreement. And as to the said agreement, and allegiance founded thereupon, it was *answered*, it was conditional, if the sum condescended on were punctually paid at Whitsunday 1661, the former bond should stand in force. It was *replied*, That the condition resolved only in a failzie, which the defender might yet purge, considering especially the time and scarcity of money, and that the said Margaret had so far miscarried against her friends; and the bond was never a delivered evident, but put in her uncle's hand to be furthcoming to her, if she should carry a-right.

THE LORDS found the second allegiance or reply relevant, and that the defender might yet purge. *See IRRITANCY.*

Fol. Dic. v. I. p. 189. Gilmour, No 60. p. 43.

No 23.
Marriage being free, the Lords refused to sustain conditions and limitations regarding it, adjected to bonds of provision to daughters.

1672. *February 22.* FOWLIS *against* GILMOURS.

IN a declarator pursued at the instance of Dame Margaret Fowlis, relict of Sir Andrew Gilmour, against Alexander Gilmour, eldest son to Sir John Gilmour late Lord President of the Session, and Annes Gilmour, his sister, upon this ground, That Sir Andrew having disposed, in favours of Margaret Gilmour his only daughter, his whole estate, which he then had, or should acquire, with this provision, that in case his daughter or her children should decease be-

No 24.
A wife being substituted by a husband to a provision left to a child, in case of the child's death.