

S E C T. V.

Effect of a resolute condition.—Conditional provisions to Daughters.—Condition in a contract for Mariners' wages.

1676. December 12. DURHAM against DURHAM.

SIR ALEXANDER DURHAM having, upon deathbed, given bond to the Lord Clermont for 20,000 merks, and, at the same time, having ordained his nephew Mr Francis Durham, his apparent heir, to pay to Adolphus, natural son to the said Sir Alexander, 6000 merks; the said Mr Francis did, after the defunct's decease, grant bond relative to the foresaid bond, and to the order for Adolphus his provision; whereby he ratified the foresaid bond, and was obliged to pay the said provision to Adolphus, upon this condition, that the Countess of Middleton should warrant and relieve the estate of Largo from all inconvenients, and in special, such as might arise from his uncle's intromission with public accounts; and if the estate should not be free, in manner foresaid, that the said bond should be void.

The said Adolphus having pursued upon the foresaid bond, it was *alleged*, that it was conditional, as said is. And the defender did condescend that the estate was distressed for a debt of 20,000 merks, for which a decret was recovered against his heir.

THE LORDS found, notwithstanding, that the said resolute condition was to be understood so that the bond should not be void altogether, but only proportionally effeiring to the distress.

This decision, though it may appear equitable, appears to be hard in strictness of law, the precise terms of the condition being considered.

Reporter, *Newton.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 192. Dirleton, No 397. p. 195.

1705. July 27.

SIR GILBERT ELLIOT LORD MINTO against WILLIAM GORDON, Merchant in Edinburgh.

WILLIAM GORDON merchant having granted to my Lord Minto, when clerk to the Privy Council, an obligation in the terms following: ' Upon the safe arrival of my ship, the Royal Ann, at Leith, for which the Lords of her Majesty's Privy Council have been graciously pleased to recommend me to her Majesty, for procuring a pass to retire my effects from France, I promise to deliver, to Sir Gilbert Elliot, an hogshead of the best wine aboard as payment of his dues for extracting the said act of recommendation.' The Lord Minto

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No 49.

In a bond of ratification, a party became bound to pay a legacy, upon condition that the granter relieved an estate of all other inconveniences. Found, that this resolute condition ought not to void the bond entirely, but only proportionally according to the distress.

No 50.

A party bound himself, to pay a hogshead of wine, upon the safe arrival of a particular ship. This wine was to be the *douceur* for