

would not have annulled her portion, unless he gave a reasonable cause of his refusal. The defender *replied*, That clauses adjected, in case parties marry not, are holden as not adjected, being impeditive of marriage, which should be free; but free donations granted on condition, 'That the party marry such a man, or marry not, without the donor's consent,' are no ways rejected; much less in the case of a father and daughter. *2do*, The daughter should have craved her father's consent, both by her natural obligation, and her back-bond, nor was he bound up by his disposition to Grant; for, if she had proposed a reasonable cause why she should not marry Grant, if it had been no more but that she could not find affection for him, it might have excused her, if she was ready to depon that it was true; but she is inexcusable never to have demanded her father's consent; neither was he bound up, but if he had been convinced of the reasonableness of her refusal, in not marrying Grant, and marrying Ardvorlich, he might have consented, and so purified the condition in her bond, which being before Grant's disposition, could never be prejudged by any clause in it.

THE LORDS found the liberty of the marriage did not exclude the provision in the back-bond, and found that the father might have assented to her marriage with Ardvorlich, and so made the bond effectual, albeit after the bond he had insert an irritancy in Grant's disposition, and therefore adjudged only for the 10,000 pounds.

*Fol. Dic. v. 1. p. 189. Stair, v. 2. p. 756.*

1680. December 3. The Laird of FETTERNEER *against* The Lord SEMPLE.

THE deceased Lord Semple granted a bond of provision to his daughters, specifying their particular portions, and bearing this clause, 'That they should proceed in all their affairs by advice of his friends therein mentioned, and in case they did transgress, or did not carry themselves virtuously, the bond as to these should be null, at least his friends, or the major part of them on life, should have power to restrict, and to apply the restriction to such other of the daughters as they thought fit.' The portion of his eldest daughter Mistress Anna, is 10,000 merks by a former bond of provision, 'having only power to himself to alter,' and she having married the Laird of Fetterneer, he pursues for her portion. The defender *alleged*, That she married without his friends consent, and that therefore they had restricted her portion to 6000 merks, suitable to the quality and fortune of this husband, and bearing this consideration, 'That his fortune was but small, and lying far from her friends in Aberdeenshire.' The pursuer *answered*, That all clauses against the freedom of marriage are null. *2do*, That Mistress Anna could not be said to transgress, unless the second bond had been intimate to her, or known by her. *3tio*, Though it had, and though she had required their consent, and they had refused it;

VOL. VII.

17 F.

No 26.

No 27.

The condition in a bond of provision to daughters, that they should proceed in all their affairs by advice of certain friends, found to be valid and effectual.

No 27. yet such clauses could take no effect, unless they could instruct a just cause of the refusal, much more when they were past by.

THE LORDS found the clause of the bond was just and valid ; but it could not be understood to be transgressed, unless it had been known to the Lady before her contract of marriage, and in that case, ordained her friends to declare their relevant reasons of denying their consent, and to instruct the same.

*Fol. Dic. v. 1. p. 189. Stair, v. 2. p. 812.*

1681. February 13.

HAMILTON *against* HAMILTON.

No 28.

MARRIAGE being free, marrying without a father's consent, was found not to annul a bond of provision, by a father to his eldest daughter. The bond contained this clause, ' she marrying with his consent, and of those named by him as her curators, ' otherwise she should only have the sum of blank,' which was never filled up. The LORDS found they might fill it up, if she had transgressed the clause, and thereby restrict the provision according to the match she made ; but this nomination not being shown or known to her, the irritancy was found not incurred.

*Fol. Dic. v. 1. p. 189. Stair, v. 2. p. 865.*

\* \* \* See The particulars, No 3. p. 672.

1682. March.

FOORD *against* FOORD.

No 29.

A party granted a disposition to his niece with this *proviso*, that she should not marry without consent of certain persons. The contravention found relevant to annul ; but the defence admitted, that she had required this consent, and it had been refused without a cause assigned.

WILLIAM PETRE in Wester Saltoun, having granted disposition of his moveables to Allison Pooll, his niece, with this provision, That she should marry with the advice and consent of William Foord and John Calderwood in Saltoun, and in case she should not follow their advice, and marry otherways, the disposition is declared to be null and void ; in that case, disposes his moveables to the said Allison and to her brother, and to Elizabeth, another sister, equally amongst them. And the said Allison having married without consent of the persons appointed by the father, her brother and sister raise a declarator against her, for declaring the disposition to be null, and that two parts of the moveables did belong to them. *Alleged* for the defender, That such provisions are unlawful, as being *contra libertatem matrimonii*, and can be no farther sustained but to oblige the person who is burdened therewith to enter into a rational marriage ; and her husband being a suitable match, the persons appointed by the father cannot condescend upon any rational ground of their dissent. *Answered*, That such provisions are just and rational ; and as it was in the uncle's power to have dispoined his moveables to her or not as he pleased, and therefore she having contravened the provision of the disposition, she ought justly to lose the benefit thereof, which has been many times decided in the like case,