

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 disposed 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,