

No 2. which cannot afford so much as put them in the quality of the meanest tradesmen or labourers ; but, notwithstanding, it was so carried in this, and insinuated by some, that it ought to be a leading case.

*Gosford, MS. No 972. p. 654.*

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1682. February. Sir JOHN CLERK of Pennycook *contra* His SISTERS  
and Mr DAVID FORBES.

No 3. FOUND that when a sum is provided to children in a contract of marriage, if any be born and die in the father's lifetime, before getting of a bond of provision, the destination will not fall in their executry, nor can it be claimed by other heirs.

*Fol. Dic. v. 1. p. 423. Harcarse, (BONDS.) No 175. p. 38.*

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1686. Nov. 25. KELSO *contra* M'CUBY of Knokdolian.

No 4.

FERGUS M'CUBY having, by his bond, obliged himself to pay 10,000 merks to his nephew by a second brother deceased, at his age of twenty-one years, and to alimant him in the mean time, the creditor left 2000 merks, by way of legacy, to his mother's relations, and died before he was twenty-one years old ; and the legators having pursued for payment, it was *alleged* for the defender, The words, *at the age of twenty-one years*, are a part of the obligation-clause, and a condition which did not exist ; and this sense on it may be the more easily admitted, seeing the bond bears love and favour.

*2do*, The bond is conceived in favour of the defunct personally, and *not* to heirs and executors.

*Answered*, That the clause imports not a conditional obligation, but only a delay of payment ; and although the bond bears love and favour, it obliges the creditor to renounce all interest he could claim by the death of his father or grandfather, which makes it onerous. *2do*, Assignees not being excluded by any taxative clause, the bond was assignable, and also might be legated.

THE LORDS found the bond to be pure, and not conditional, and decerned the defender to pay the legacies, the legators securing him *pro tanto* against the defunct's nearest of kin, which was the quality of the bond.—This appears different from former decisions.

*Fol. Dic. v. 1. p. 424. Harcarse, (BONDS.) No 210. p. 47.*