

## 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

VOL. VII.

17 K

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

No 50.  
a recommendation in order to procure a pass to retire effects from France. The pass was not procured, yet the wine was found due, without regard to the arrival of the ship.

being informed that Mr Gordon had some wine arrived at Leith, pursued him before the Judge-Admiral for delivery of the piece of wine, or L. 12 Sterling as the price of it, and obtained decret.

Mr Gordon offered a bill of suspension, upon these grounds, *1st*, The performance of the obligation being conditional upon the recommendation's taking effect, and the arrival of the ship the Royal Ann at Leith, and the condition never existing, the obligation fell.

*Answered* for the charger ; The condition of the obligation could not be taxative as to the Royal Ann ; for the wine might have been shipped in the Royal Ann, and she perishing by the way, brought home in another bottom ; or Gordon, who inclined at the date of the obligation to transport his effects in the Royal Ann, might have afterwards altered his resolution, or the name of that ship might have been changed. *2do*, If Gordon had designed to oblige himself only upon the event of the success of the recommendation, he should have expressed it so ; for, *in dubiis*, words are always explained *contra proferentem*.

THE LORDS refused the bill.

*Forbes, p. 39.*

1738. July 7.

DRUMMOND *against* DRUMMOND.

No 51.

PROVISIONS to daughters, failing heirs male, are not due, if an heir male survive the granter ever so short a time.

*Kilkerran, (PROVISION TO HEIRS AND CHILDREN.) No 1. p. 455.*

1754. February 26.

DOROTHEA PRIMROSE, and Sisters, *against* His MAJESTY'S ADVOCATE.

No 52.  
The condition *si sine hærede masculo decesserit* disappointed by the existence of a son, tho' he outlived the father but two months.

BY a contract of marriage, dated 1724, between Sir Archibald Primrose and Lady Mary his wife, the former is bound to resign his lands, &c. to himself and heirs male of that marriage ; which failing, to the heirs-male of any subsequent marriage ; which failing, to his other heirs of tailzie ; with the following proviso in favour of daughters. ' And, farther, in case there be no heir-male, but allearly a daughter or daughters of this marriage, &c. and that they shall be debarred from succeeding to the estate by Sir Archibald's other heirs-male ; then, and in that case, Sir Archibald binds him and his heirs-male and successors in the foresaid lands, to make payment to the daughter or daughters, &c. viz. if one, 24,000 merks ; if two or more, 36,000 merks, &c. and that at the first term of Whitsunday or Martinmas after his decease, &c. with annual-rent thereafter.'

Upon the 15th November 1746, Sir Archibald suffered death for high-treason, leaving issue one infant son and seven daughters. In January 1747, his son died. The daughters entered a claim for the 36,000 merks.