

' Dear sister, I always designed to make a bond of provision in your favour, for L. 500 Sterling, and I assure you I will do it upon demand.'

Answered, The letter only expresses what was the writer's present intention, and does not import any obligation upon him. If it is obligatory, it is to grant a bond of provision; and, as it does not set forth the terms thereof, must be understood according to the ordinary terms of provisions, and be payable at the granter's death; as also to imply such conditions as might be reasonable for a brother giving a gratuitous provision to a sister to adject thereto, such as that she should marry with his consent, at least she should marry suitably, which she has not done, her husband being one of the defendant's tenants.

Replied, The promise was not wholly gratuitous; the defender and pursuer were both left unprovided by their parents, so that she had gone to service; but he, who was bred a merchant, and was set up, though with small stock, persuaded her to live with him, and direct his family, which she did for fifteen or sixteen years, during which time he made a considerable fortune. The letter contains no conditions, but is a positive promise; and her marriage has not been so unsuitable as is alleged, her husband's stocking upon his farm being worth L. 200 Sterling, and he having a term to run of twelve or thirteen years of a farm paying L. 78 Sterling.

THE LORDS repelled the defences, and found the defender obliged to pay the sum of L. 500 Sterling, with interest from the date of the execution of the summons, or grant bond therefor at the sight of the Lord Ordinary.

Act. *Ferguson.* Alt. *R. Craigie.* Reporter, *Justice Clerk.* Clerk, *Forbes.*

Fol. Dic. v. 4. p. 23. D. Falconer, v. 2. No 238. p. 290.

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mising her a
bond for a
sum, found to
oblige him to
grant it, free
of all clog-
ging condi-
tions.

S E C T. V.

Obligation to grant a Right.—Whether such an Obligation be equivalent, as if the Right were granted.

1629. December 16. HUNTER against His TENANTS.

IN a removing, the defender defending with a contract of wadset, and actual possession by the pursuer's author, the same was repelled against this removing pursued by a singular successor. *Item,* The said contract providing, that the defender shall be kindly tenant for the old duty, after the redemption; this also was found not to defend him against this pursuer, because it was conceived

No 27.

No 27. in terms of an obligation, to receive him a kindly tenant, and was not by words of the present time.

Act. ———.

Alt. *Hart.*Clerk, *Hay.**Durie, p. 474.*

1734. *January 17.* SINCLAIR *against* SINCLAIR.

No 28.

A PERSON who had right to lands by disposition, containing procuratory and precept, without infeftment, granted a personal obligation to convey the same to one, and thereafter the disposition was adjudged by another. The creditor in the personal obligation *pleaded* preference upon this *medium*, That an obligation to assign a personal right, is a virtual assignation, by which the common author was denuded before leading the adjudication, according to the brocard, that a personal conveyance denudes of a personal right. On the other hand, it was *pleaded*, That an obligation to grant a right may be equivalent to the right itself, where the question is with the obligant, but never can be in competition with third parties, especially where the right to be granted is a procuratory or precept, an obligation to grant which will be no warrant for infeftment. THE LORDS found, That the obligation to convey the disposition in question, did not transmit the same, but that it did remain in the debtor's person, subject to the posterior diligence of creditors.—*See APPENDIX.*

Fol. Dic. v. 2. p. 17.

1737. *January 26.*

No 29.

Sir JAMES DALRYMPLE of Hailes *against* HEBBURN of Binston.

IN the year 1629, the parson of Prestonhall granted a tack of teinds, expiring in February 1728. In the end of the tack there is an obligation upon the granter and his successors, parsons of the said parish, after the ish of the present tack, to renew the same in favour of the tacksman and his heirs, for the like number of years, and the like tack-duty. The question was, If this obligation to renew was real and good against singular successors in the right to the teinds, so as to defend the tacksman and his heirs against the patron, who obtained right to the said teinds, in virtue of the act 1693, before any possession could be had upon the said obligation? It was *pleaded* for the tacksman; The obligation to renew is of the nature of a prorogation, which is a real right, and this must have been the meaning of parties; for, considered as a personal obligation, it could have no effect beyond the granter's life, seeing he could not bind his successor in office. *Answered* for the patron, Had the lands fallen below the tack-duty, there was no obligation upon the tacksman to continue in possession, and pay the tack-duty, after expiration of the tack in 1728. This obligation, then, can never be