

down ; but, as the cause has proceeded so far before this Court, I think that this Court may determine it.

On the 4th July 1780, "The Lords sustained their jurisdiction in this cause."

Act. A. Crosbie. *Alt.* A. Murray.

Hearing in presence.

Diss. Stonefield, Hailes, Monboddo.

N. B.—It is hard to say what was the principle of this interlocutor, for the Judges who voted for the interlocutor went upon different and contrary grounds; yet the general question was fairly put, and no other question could have been fairly put.

1780. November 15. THOMAS HAY *against* WILLIAM WOOD.

CONDITION.

A Father granted a Bond of Provision to his Daughter, supposing her to be unmarried, to be null if she married without his consent. She had been previously married, at which her Father expressed dissatisfaction, though he received her into his family. The Bond found not exigible.

[*Fac. Coll. IX. 12 ; Dict. 2982.*]

KAIMES. Mr Wood would not have given his consent, had it been asked. He knew nothing of the marriage which had taken place: his intention only respected a future marriage.

BRAXFIELD. I should think it a hard case, if a sum intended for the young woman should go to the creditors of her husband. The question is not, Whether she is to be provided for she is, at any rate, entitled to a handsome provision. The father made a gratuitous deed, and he was at liberty to adject any lawful condition to his gift. The condition was not only lawful, but rational.

COVINGTON. The condition is *irritating*, but the provision itself is *absolute*. All that the daughter could get by this bond was present money. [He quoted the civil law, as in the informations, which, as he said, determined this case, and he laid much stress on the ratification.]

KENNET. Great is the favour of marriage, but there is also favour due to the will of the parent. A gratuitous deed may be qualified by the will of the father as well as of a stranger. I go upon what was *actum et tractatum*. I do not dissect words; I take the whole together. The text of Pomponius, in the *Corpus Juris*, relates to the case of a father intending to give a sum to his daughter, should she marry, whether with or without his consent; and therefore the Roman lawyers thought that the phrase *si nupsisset* was not to be attended to.

MONBODDO. If the lady had not been previously provided, the bond would have been due; but here the case is different. As she was previously provided, the bond was gratuitous, and the father could adject whatever lawful condition he pleased; but I doubt as to the other point, the ratihabition. Here, again, we must consider the terms of the bond, granted as to an unmarried, not a married woman. The father considered the bond as importing no obligation at all: a ratification implies a prior, although imperfect obligation.

GARDENSTON. It would be hard to disappoint the creditors, who may have contracted on the faith of this bond. Any sort of antecedent consent would have been good: it is the same thing that the father approved of the marriage by receiving his daughter and her husband into family with him. This principle is as clear as any in Euclid, *ratihabito æquiparatur mandato*; and it carries conviction along with it.

PRESIDENT. Here there is no occasion to differ on points of law. A father cannot disappoint marriage altogether by adding conditions of consent; but, the lady having been previously provided, the bond must be considered as granted by a stranger. The favour of creditors is out of the question: the condition is not so worded as that it can have any effect. How can I punish the daughter for not observing a condition of which she knew nothing? I read not in the bond a single word importing that the father would not have settled the money on the daughter although he had known of the marriage. If the father meant to recal his assent, why was not the deed recalled out of the hands of Lord Selkirk? We must judge the cause as if there had been no creditor in the field at all: the ratification is very strong: the father might renounce the forfeiting clause: his conduct is equivalent to a consent.

ALVA. I put my opinion on the ratihabition: it would be unfair to disappoint the creditors, who contracted on the faith of the bond.

On the 15th November 1780, "The Lords sustained the defence."

Act. Neil Ferguson. *Alt.* Ilay Campbell.

Reporter, Hailes.

Diss. Auchinleck, Alva, Gardenston, Covington, President.

1780. December 7. Mrs ANN DICKSON against Captain ALEXANDER DICKSON.

FIAR.

A Bond, taken to a Father in Liferent, and to his Son in Fee.

[*Faculty Collection, VIII. 10; Dict. 4269.*]

HAILES. The father meant to settle the L.600 on his son; but he has expressed himself in an ineffectual manner: it is probable that he forgot that his daughter still remained a bairn of the house.