of L.68, for which he sued Thomas the debtor in the bond. It appeared that William died before either father or mother, and the mother died before the father, and both are now dead. Therefore the defence was, That the bond being for a provision and payable after the father's death, implied a condition of William surviving his father, like a bond payable to a child at a certain age, and quoted a decision in 1730, Bell against Davidson, where a bond by a father to his son for his aliment payable after his own death was found null, the son having died before the father. This point I reported, and Arniston and President both agreed that we could not determine any general rule, that a father granting such a bond of provision to an infant child, and that child dying in infancy and before him, that might void the bond;—but in the present case all agreed that the bond implied no condition of William surviving his father or mother.

No. 4. 1746, July 4. CAIRMONT *against* GORDON.

A CHILD's provision, payable after the granter's death or marriage, which should first happens,—she died before either of these events, and Kilkerran found the bond vacated. But upon a petition he altered his opinion; but was not present this day when we advised, altered the interlocutor, and sustained the bond,—*renit.* the President.

No. 5. 1749, Feb. 1. MASON *against* EXECUTORS of GEORGE BELL.

IN a contract between Mason and his son-in-law, after his daughter's death, reciting that Mason had only given 400 merks in part of what he intended to give, therefore the father obliges him to pay the 400 merks to the son of the marriage, and Mason, the grandfather, obliged him to aliment his grandson till he be 16 years of age, which will happen, (says the contract) 7th May 1747 and obliged him to pay the grandson 600 merks at the term of Whitsunday 1747, which, (says the contract) will be the first term after the age foresaid;—the grandson died before that age, and the father confirmed the 600 merks, and sued Mason for payment. The defence was, that it was *dies incertus*, the first term after the child's age of 16, and he died before that time. I found that the term being Whitsunday 1747, was *dies certus*, and therefore found the sum due. But on a reclaiming bill the Lords altered, and thought it the same as if the year 1747 had not been mentioned.

No. 6. 1752, Jan. 25, Feb. 7. JANET MAXWELL, &c. *against* MAXWELL.

THE defender, in his contract of marriage, provided his then stock, with his wife's tocher, to himself and his wife, and to the heirs-male and female to be procreated of the marriage; and by a subsequent clause, in case there be no heirs-male procreated of the marriage attaining to majority or marriage, he provides the daughters attaining to majority or marriage to certain definite portions, if one to 5000 merks, if two 8000 merks, if three or more 10,000 merks, which he obliges him and his heirs-male, &c. to pay at their marriages, in full of all executry, legacy, portion natural, bairns' part of gear, or whatever they might seek through his death. Janet Maxwell, a daughter of this marriage, was married in 1727, when there was a son living, and got 3000 merks of portion,

which is declared to be on account of the provisions to her in her mother's contract, *proviso* that it should not prejudge the said contract if she should be found to be thereby entitled to more. The son lived till 1741, and then died unmarried, but he must have been more than 27, his mother having died in 1744; therefore the daughter brought a process against her father for payment of the remaining 2000 merks, to make up 5000, or otherwise to secure the succession of the whole 15,000 merks to her. I thought, as majority and marriage were put on the same footing, it could not be the intention of parties, by the clause heirs-male procreate attaining to majority or marriage, that though there should be a son of the marriage who should be himself married, and perhaps provided by the father, who should afterwards die before him, that therefore the father should be liable to his daughters for their special sums, and therefore I thought the son having survived majority, the condition of these special provisions had failed; but thought the pursuer, if she survived her father, entitled to be heir of provision of the 15,000 merks; but as the father has now a second wife, and a son and four daughters of that marriage, and a small fortune to divide among all his children, he had a rational power of administration; and therefore now that the pursuer was married and had got 3000 merks 25 years ago, which with interest would now be 7000, he might lawfully provide what remained to his other daughters. Justice-Clerk said, that a son of a marriage may in his father's life receive implement of provisions to heirs of a marriage, so as to bar other heirs,—therefore had the son been married and provided, the pursuer would have been barred; but it will not follow that his majority, without being provided, would bar her; but I doubt of the answer, or that the son's being provided or not by his father, would alter the case. It is true, were the question on the first clause, where heirs-female are substituted to heirs-male, the son's discharge on implement would bar the substitutes, though he should die before the father: But the question is about the parties' meaning in the second clause,—the special portions to daughters, which the son could not discharge nor receive implement of,—and, if the condition existed, behoved to be due, whether the son discharged his provisions or not;—and if the condition did not fail by the son's marriage, though in his father's life, I doubted if the father's giving him a provision would alter the case if he died before his father, and so could not be heir. However, the Lords found the 2000 merks due, but no interest from the pursuer's marriage, which they claimed.—7th February Adhered, and found it in full of all her claims.

DAMAGE AND INTEREST.

No. 1. 1734, July 5. M'CULLOCH *against* M'CULLOCH of Polton.

FOUND no damages or expenses besides the expenses of this process;—and expenses of adjudication not competent *hoc statu*.

No. 2. 1745, Feb. 28. PATERSON *against* KEITH of Bruxie.

IN this case we allowed no consequential damages, and therefore none of the expenses of the pursuer's process with the Baxters of Glasgow, to whom Paterson sold the wheat;