No. 3.

both father and mother, in satisfaction of bairns part of gear, portion-natural, executory, &c. that he could claim through the death of either, and of which he gave his brother a discharge of the same date; he died before either father or mother, and the father died before the mother. This was found to be no conditional bond, and the money, notwithstanding his pre-decease, found due.

1746. *July* 4. CAIRMONT *against* GORDON.

No. 4.

A CHILD'S provision being payable the first term after the granter's death or the child's marriage, which of them should first happen, we thought it not a conditional provision, because the granter's death was not what the law accounts *dies incertus;* and therefore, we found that the bond was not vacated, though the child died before the term of payment, and altered Lord Kilkerran's interlocutor, and he had himself altered his own opinion.

1749. *February* 1. MASON *against* EXECUTORS of GEORGE BELL.

No. 5.

A CONTRACT where a grandfather obliged him "to aliment a grandson "till he be 16 years of age, which will happen (says the contract) May 7, "1747, and to pay him 600 merks at the term of Whitsunday 1747, which "(says the contract) will be the first term after the age foresaid;" the grandson dying before that age, the obligement for 600 merks was found conditional, and the money not due, and my interlocutor finding it due altered.

1752. *Jan.* 25, *Feb.* 7.
JANET MAXWELL, and STORIE, Her Husband, *against* JAMES MAXWELL of Merksworth.

No. 6.

A CONTRACT of marriage provided the man and wife's whole stock, 15,000 merks, to the heirs-male, whom failing, the heirs-female to be procreated of the marriage, containing an obligement, in case there be no heirs-male procreated of the marriage attaining majority or marriage, to pay to the daughters, if one, 5000 merks, if two, 8000 merks, if three or more, 10,000 merks, payable at their marriage, in full of legitim, executory, or what they could

claim through the father's death. In 1727 a daughter of the marriage, Janet Maxwell, was married, and got 3000 merks of tocher when a son of the marriage was living, provided that it should not hurt her claims by the said contract if more were due. The son lived till he was 27 years of age, and died in 1741, when the father had several children, sons and daughters of a second marriage, and a small stock to divide among them. The daughter sued her father for the other 2000 merks, to make up the 5000 merks with interest from her marriage; and the Lords found her entitled to the 2000 merks, because the son died before his father, and therefore could not be heir though he survived majority; but without any interest, and in full of all her claims. I own I differed, and thought the meaning of parties was, that if a son was either married or attained majority, the condition of the obligement failed, though he should die before his father, and could not actually be heir; otherwise though the son had married and been provided, and though he had children, at least daughters, yet if he had died before his father, the condition of this obligement would have been purified, and the daughters portions due.

No. 6.

See M'Kenzie against Sutherland, 18th July 1750, *voce* PROVISION TO HEIRS AND CHILDREN.

See Laurie against Lewis, 13th February 1736, *voce* LEGACY.

See Johnston against Napier, 11th June 1740; and Beatson against Beatson, 30th June 1747, *voce* MUTUAL CONTRACT.

See NOTES.

CONQUEST.

See SUCCESSION.

CONSIGNATION.

See REDEMPTION.

CONSOLIDATION.

See SUPERIOR AND VASSAL.

COURTESY.

See HUSBAND AND WIFE.