case daughters and heirs female, if there are not circumstances to show the contrary, why should not both characters concur, ere the person be entitled to claim the provision? But the matter does not rest here; the reason of the thing, which is the strongest of all circumstances, concurs to support the natural construction of the words; for though it must be owned, the deed itself tailying a trifle in this way was foolish and unreasonable, yet still the most irrational thing of all would have been, to burden his son with 10,000 marks to a daughter, whereas the burdening the extraneous heir male in it, in case of his succession, was the only case in which in common sense any one would have given such a provision to a daughter.

N. B. The interlocutor was adhered to as above, on these grounds, 1*mo*, that the heir male burdened, plainly comprehended the son, as well as the other heirs male. 2*do*, The general disposition of all moveables, as well as heritage to the heirs male."

1743. *November* 26. GARDEN *against* RIGG.

MR. THOMAS RIGG, advocate, being pursued by Garden of Troup, as assignee by Mr. John Arrat, for certain bills accepted by him, payable to Arrat; objected the nullity, that they bore interest from the date, with a fifth part as penalty.

The Lords found, "That the defender being, at the date of the bills, Mr. Arrat's ordinary lawyer and adviser, he was thereby barred from proponing the objection." *Kilkerran*, p. 382.

1743. *December* 13. KATHARINE THOMSON *against* GILBERT LAWRIE.

THIS case is reported by C. Home, (No. 229, *Mor.* 6142.) Lord KILKERRAN'S note of it is as follows:

"On report, the Lords repelled the defence by the President's casting vote; for sustaining, Arniston, Dun, Monzie, Leven, Balmerino, Kilkerran; for repelling, Royston, Drumore, Haining, Strichen, Elchies, Murkle.

"The reasoning was to the following purpose: The taxative words, 'by and through the decease of the said Gilbert Lawrie,' were no doubt very straitening; and it is no less true, that Judges are not to allow themselves the liberty of judging from intention, except where there are words to found that argument; and here the above taxative words do rather exclude the intention which the defender here pleads for.

"On the other hand, there are here other words, which in their proper meaning do directly respect the case that has happened; viz. these words, 'and all others, she, her executors, or nearest of kin could claim;' and all the question is, whether these words are to be in effect left out, because of the following words, by or through, &c.; which, as they stand, are taxative of all that went before; or if these words, she, her executors, or nearest of kin, &c., must still have their effect, notwithstanding

of the taxative words, and of the writer's omitting the words *or otherways,* when every body must in their conscience be convinced the intention was to exclude her executors in case of her predecease, as well as her own claim in case of her husband's predecease.

" I say the question comes to this, whether these words, *her executors or nighest of kin* are in effect to be left out; for though it is true that where the husband predeceases, if she neglect in her own time to prosecute her claim, her executors may do it, yet it is absolutely unprecedented in style to exclude the claim of her executors, except where the exclusion is designed to comprehend the case of her predecease, which is a convincing evidence of the intention. 2*do,* In reality the expression, " which her executors or nighest of kin can claim," does only properly apply to the case of her predecease, for in that case, indeed, her nighest of kin have, as such, a direct claim; whereas in case of the husband's predecease, she, and not they, has the immediate claim, to which case therefore the expression here does not in strict propriety apply.

" *February* 18, 1743.—The Lords altered their former interlocutor, and found the clause renounced not only the wife's claim in case of the husband's predecease, but also her executors' and nighest of kin's claim in case of her predecease.

" *December* 13, 1743.—The Lords adhered, without one word of reasoning, the question being barely put by the President to the vote. It being late in the day when the bill and answer was moved, and that the interlocutor on the report had proceeded upon a full reasoning."

1745. *February* 7. JOHN WEIR *against* WILLIAM STEEL.

The facts and proceedings in this case, are narrated in the reports of it by D. Falconer, 1—67. (*Mor.* 11359;) and by Elchies, (*Presumption, No.* 17.) *Vide etiam Elchies, Service of Heirs, No.* 4. and *Witness, No.* 25.

Lord KILKERRAN gives the following account of the proceedings:

" 19*th December*, 1744.—This day Lord TINWALD was Ordinary in the Outer-House, but called in by the Lords after twelve. Lord ELCHIES made the report very full, and observed particularly the different manners in which the decision concerning the Aikmans was stated by Craig and by Balfour; and further took notice, that he had looked into the decision, as it was observed by Ledington, who had observed it in the manner as stated by Mr. Weir's procurators. That at the time of the decision, Ledington was a judge of the court, and Balfour an official in the ecclesiastical court at Edinburgh, who consequently must have been better acquainted with the decision than Craig, who, in the year 1530, was not then come to the Bar, and consequently might more easily have been mistaken than they.

" When the report was finished, Lord ARNISTON spoke first, and said that he saw no evidence that Weygateshaw had altered the solemn settlement he made, for that the contract of marriage was entered into to secure the children and issue of it, and that the heirs whatsoever were added of course, without any meaning other than to save the estate from being caduciary. That as the substitution was to heirs and assignees, the word assignees comprehended dispositions and assigna-