No. 4. 1739, Dec. 19. RUSSEL *against* GORDON.

See Note of No. 13, *voce* MUTUAL CONTRACT.

No. 5. 1741, Jan. 9. HAMILTON *against* ANN HAMILTON.

A FATHER disponing his estate to his eldest son, and taking a bond of provision to his younger children by certain proportions, without any reserved power to the father, the question was, Whether the father could afterwards alter the proportions? and the Lords found that he could not.

No. 6. 1742, Jan. 19, Feb. 4, 18. EARL OF SELKIRK *against* LORD ARCHIBALD AND BASIL HAMILTON.

IN this case, the Lords found the Earl of Selkirk obliged to relieve the pursuer, Lord Archibald Hamilton, and to disburden the lands of Riccarton of the heritable bond of L.3000 he had granted on those lands as the provision of his daughter, the Countess of Cassillis; for they thought that the condition of the devolving clause having existed by his succession to his brother Selkirk's greater estate, he must denude of Riccarton as he got it; and that the faculty to provide wives and children, was only an exception from the prohibition to alter the order of succession. 2dly, They found the devolving clause in the assignation 1685, to the heritable bond on Callender for L.20,000, altered by the general devolving clauses in the settlements of Crawford-Douglas and Crawford-John 1693, and therefore found the Earl bound to pay over that sum to the pursuers, Lord Archibald and Basil. 3dly, They found the devolving clause in those settlements sufficiently altered as to the heritable bond granted by the Dutchess with the Duke's consent for L.40,000, also in 1693, containing an express power to the longest liver to alter, according to the marriage contract 1694; and 21st January, after hearing parties on the superiority and non-entry of Ellieston, they found that the devolving clause in the settlement of Crawford-Douglas and Crawford-John, did not reach this subject; and 4th and 5th February we altered as to the last points, and refused bills without answers; but a reclaiming bill as to the first point was, by the President's casting vote, appointed to be seen. 12th November 1742, The Lords altered the interlocutor as to this point; and found the Earl of Selkirk not bound to disburden of the L.3000; nine to five. *Renit.* Arniston *et me.* But a back-bond being afterwards discovered from the Earl and Countess of Cassillis to Rutherglen, that that L.3000 sterling should not affect him or his heirs, they again altered 18th February 1743;—and this last interlocutor was affirmed in Parliament, as were our other interlocutors, except that about Ellieston, which was remitted to be reheard, because of the Earl of Selkirk and Rutherglen's death.

No. 7. 1743, Nov. 23. THOMAS WATSON *against* THOMAS GLASS.

AN obligement in a tailzie, in case there shall be daughters and heirs-female procreate of the maker's body alive at his death, obliging his heirs-male and of tailzie to pay his said daughter and heirs-female 10,000 merks,—the question was, Whether that oblige-

ment took place where the tailzier's own son succeeded to him,—whether he was bound to his sister for this 10,000 merks, since she was not an heir-female, since the son was the sole heir? By our interlocutor 15th June last, we found her entitled to the 10,000 merks. Arniston owned that at first he was against the interlocutor, but now he is for it, and said that the providing the 8000 merks, the tocher, and the other moveables, in the same way with the estate, that greatly moved him; and observed, that in money provisions in marriage contracts, "daughters" and "heirs-female" are often used to signify daughters, though there were sons. And upon the question we adhered.

No. 8. 1745, June 5. SIR L. MERCER *against* ANDREW SCOTLAND.

See Note of No. 4, *voce* IMPLIED WILL.

No. 9. 1747, July 1. SARAH EWING *against* THOMAS MILLER.

A MAN having in his contract of marriage provided his estate to the heirs-male of the marriage, and failing them provided portions to the daughters and heirs-female of the marriage; there was a son of the marriage who predeceased, leaving a daughter. She pursued her aunts, to whom her grandfather had given his estate, for payment of the provision in the contract as heir-female of the marriage; but as men do not usually in their marriage settlements provide portions to their grand-daughters, we thought that grand-daughters were not meant by this clause, and therefore assoilzied.

No. 10. 1747, NOV. 17, 20. ANDERSON *against* JANET, &c. SHIELLS.

WE adhered to Kilkerran's interlocutor, and Arniston thought that by the death of the child of the second marriage the provision to her was at an end, and so thought I, but wished it had been so expressed. 26th November, Upon a reclaiming bill we varied the former interlocutor and found the obligation extinct.

No. 11. 1747, Dec. 1. EARL OF HOME *against* MRS E. BOTHWELL.

See Note of No. 4, *voce* CLAUSE.

No. 12. 1749, Dec. 15. CREDITORS OF AUCHINBRECK, COMPETING.

THERE was one point in this competition heard in presence, viz. a bond of provision to younger children, payable at their age of 18 or marriage, with a clause of accretion, that if any of them die unmarried their portions should accresce to the survivors, Whether that accretion takes place whether they die before the term of payment or only when they survive the term? and it carried that the accretion takes place at whatever time they die though before the term of payment. *Pro.* were Milton, Drummore, Strichen, Justice-Clerk, Monzie, *et ego*. *Con.* were Dun, Murkle, Shewalton, Easdale, President. When there was such contrariety of opinions in this point, how much is our law changed from what it was! *Vide* Dirleton, Substitution in Legacies. Stair, p. 480, (501.)