initio pure and simple; and if it were otherwise, this inconvenience would follow, that debtors in conditional bonds may dilapidate and squander their estates at their pleasure, or abstract their effects, without any legal remedy to hinder them, which is absurd. Now, to apply all this, *esto* the 4000 merks, as the half of the 8000 merks, were a conditional debt, depending on the event of her father's having, or not having a son, it is hugely unreasonable that no diligence can be done for securing this till the event tell whether it will be due or not, especially seeing he has abstracted and withdrawn all his effects out of the kingdom, and left nothing to pay it *in eventu*, except a personal action against his heirs, which we may easily conjecture will be vain and frustraneous. THE LORDS were straitened in this point, on the one hand, not to encourage children to disturb their parents with processes, contrary to that dependence and duty nature requires; and, on the other, that parents may not evacuate and elude their provisions-matrimonial, introduced in favour of their children, which are *uberrimæ fidei*. Therefore the LORDS ordained it to be farther argued. No 94.

1709. *July* 2.—IN the cause Hay *contra* her Father, mentioned *supra* 28th June 1709, the LORDS having considered the case, they were all clear of these two points, 1*mo*, That the father ought to secure her in the fee of 8000 merks, provided to her in the event of his having a son by another marriage, seeing he had transferred his domicile and retired his effects; 2*do*, That he ought to find caution to her for the annualrent of the 4000 merks, as the first moiety due to her after her marriage, and whereof the term of payment was now come. But some of the LORDS thinking she ought to enter to the payment of the annualrents of that half presently, and if she happened to succeed to the L. 1000 Sterling left by Dirleton, then her father would get allowance and deduction of these payments out of that greater sum *pro tanto*; this last point was remitted to be farther heard, and likewise the nature of Dirleton's security; and if it was uplifted, or re-employed again for the heir-male in the first place, and failing of him to the daughter, as heir of line, in the next place.

Fol. Dic. v. 2. *p.* 286. *Fountainhall, v.* 2 *p.* 507 & 509.

1727. *June.* ANDERSON *against* ANDERSON.

No 95.

ANDERSON, brewer, having, in his contract of marriage, become bound betwixt and Whitsunday then next to lay out 6000 merks of his own stock, and other 6000 merks payable to him in name of tocher, upon land or other sufficient security, to himself and spouse in conjunct-fee and liferent, and to the children of the marriage in fee; and soon after the term being charged to implement; suspended upon this reason, That however the clause was conceived, it could never be the intention of parties, that he should be bound to lay out

No 95. his whole stock upon land, and thereby render him unable to carry on his business, or even to live comfortably, far less to make any conquest, which yet was in view, because it also was provided to the children of the marriage; the LORDS were sensible, that the demand was rigorous, but they would not take it upon them to relieve the suspender against an express obligation, and therefore found the letters orderly proceeded. See APPENDIX.

Fol. Dic. v. 2. p. 285.

No 96. 1738. *July* 7. DRUMMONDS *against* DRUMMOND.

PROVISIONS to daughters failing heirs-male are not due, if an heir-male survive the granter ever so short a time.

Kilkerran, (PROVISION TO HEIRS AND CHILDREN.) *No* 1. *p.* 455.

No 97.

Children having bonds of provision, with a clause that what they should have at their decease should fall to their elder brother, have the *jus exigendi.*

1745. *July* 16. DEANS'S *against* LOCKHART.

THE children of Deans of Woodhouselee having bonds of provision secured on the estate, sold them to George Lockhart of Carnwath; and insisting for the price, he suspended, for that they could not convey to him their bonds, since it was expressly provided, that in case any of the children should die before they were married, their portion, or what they should happen to have at their decease, should fall and be paid to their eldest brother, heir to their father.

It was *urged*, That notwithstanding this clause they had the *jus exigendi.*

THE LORDS refused the bill.

D. Falconer, v. 1. p. 122.

No 98.

Provisions to daughters contained in a marriage contract, when due?

1758. *June* 20. MARY MACDONELL *against* His MAJESTY'S ADVOCATE.

BY contract of marriage in 1730, between Archibald Macdonell of Barisdale and Isabel Mackenzie, the said Archibald, and his eldest son of a former marriage, Col Macdonell, became jointly bound in favour of the daughters of the marriage, in these words: "And in case there be only daughters procreate of the said marriage, and no heirs-male existing, then, and in that case, they, the said Archibald and Col Macdonells, hereby provide the said daughters as follows, viz. if there be only one daughter, to her the sum of 1000 merks Scots; and if there be two, three, or more daughters, to them all the sum of 3000 merks, whereof a double portion to the eldest, and the remainder to the younger, equally betwixt them; and in case of the decease of any of them, the portion of the daughter deceasing after dissolution of the said marriage, to fall and accresce to the surviving daughters, equally betwixt them; and which portions