favours of the donor, but also of all the intermediate heirs; and he spoke of it to me afterwards as his real opinion, and wished that we might not determine that point. I had a good deal of difficulty on the general point. In a common clause of return, the limitation in favours of the donor and his heirs, though now settled, is only by implication. It would be a further extension of it to carry it also in favours of the intermediate heirs, and the above instance of marriage settlements is a very strong argument, though I own there is this difference between them, that a clause of return implies a limitation in favours of the donor, (when the event of the failure of heirs-male shall happen) not only on the original heir, but on all the intermediate heirs, that they shall not disappoint the return, whereas the implied restriction in marriage settlements only is upon the husband, and neither the heirs-male of the marriage, nor failing them of any other marriage are under any limitation to these heirs-male. 2dly, That is the case of reversion and remainder heirs in England, and was before the statute *de donis*, and yet that statute says expressly, that that was against the donor's intention; and I confess, if the succession was lawfully altered in prejudice of the intermediate heirs, the clause of return cannot long be of any service, not only because of the difficulty of proof of failure of the intermediate heirs after they have been some generations out of possession, and possibly become very obscure, but also because of prescription; but I could not conceive that the implied limitation in a clause of return of an appanage given to a younger son, could have a stronger effect in favours of either the donor or the intermediate heirs, than an express prohibition to alter, even where it is not an appanage, but an onerous contract, as was the case of the charter 1638. And as all the Lords agreed, and even Mr Craigie seemed to admit that the charter 1607 was an effectual discharge of the clause of return in the charter 1595, that was a further argument that there was no *jus quæsitum* to the intermediate heirs, otherwise Earl Morton could not have discharged it. Lord-Justice-Clerk, upon this question, also mentioned the decision, Lady Chatto, (Kerr) against her brother. But I am not acquainted with the case. As to the prescription, I thought the charter 1687, and sasine 1689, would not have altered the male succession had there been no subsequent alteration made, because of Sir William Douglas's contract of marriage, providing the succession to heirs-male after the charter, and though the sasine on the charter was after the contract, that would not have altered the succession, as in the case of Major Skene of Carralstone's heirs; but as both the charter and contract were without any limitations, I thought it a good title of prescription both positive and negative.

No. 20. 1754, Feb. 6. MARGARET, &c. MUIRHEAD *against* MARY DICKSON.

JAMES MUIRHEAD, father to those two pursuers, by his contract of marriage in 1685 with Margaret Lindsay, with advice and consent of Sir George Lockhart of Carnwath, and Sir John Lockhart of Castlehill, whose relation the Lady was, provided his estate of about 3000 merks yearly, and conquest, to the heirs-male of the marriage, whom failing, to the heirs-male of his body in any other marriage, whom failing, to the heirs whatsoever of that first marriage, and the contract contains the obligation,—(The clause is quoted in

the text.) I thought it necessary to take down the clause pretty fully, because the Judges differed greatly in their opinions, and each side laid hold of some parts of the clause. This small estate was at the time burdened with a liferent to his mother, and was by the contract burdened with a contingent liferent to his wife of 800 merks in case of children, and 1200 merks in case of none, and, it was said, burdened also with other debts. He died in 1720 (1710) leaving four children, two sons and two daughters, besides his heir George; and before his death, he and his eldest son, with consent of his wife, granted bonds of provision to his four younger children; to the second son 2000 merks, to the third L.1000, to his eldest daughter, Margaret, 2500 merks, and to the second, Katharine, L.1000, with a substitution in case of the death of any of them to the survivors, in satisfaction of all bairns part of gear, &c. that they could claim through the death of their father, which provisions were accordingly paid and discharged. George succeeded to the estate, and died in 1751, and his two brothers being dead, and the two sisters yet maidens being past the age of having children, the eldest being then about 60, he settled his small estate on his wife, burdened, as was said, with 8000 merks of debt. These two ladies therefore sued her for payment of their portions in the marriage contract. (What follows in the manuscript is subjoined to the case in the text.)

No. 21. 1754, Feb. 26. DAME DOROTHEA, &c. PRIMROSE *against* THE LORD ADVOCATE.

THIS claim on the estate of Sir Archibald Primrose, was founded on a clause in his contract of marriage in these words: "And further, in case there be no heir-male, but allenarly a daughter or daughters of the marriage, and that they shall be debarred from succeeding to the said lands by his other heirs-male," then Sir Archibald obliged him to pay certain sums to the daughters, according to their number, to be divided as he should think fit, and that at the first term of Whitsunday or Martinmas after his death, with annualrent after the term of payment. Sir Archibald was attainted at Carlisle of high treason, and executed 15th November 1746, leaving an infant son and the four claimants; and the son died in January 1747. The foundation of the claim was, that though the son survived the father, yet he died before that their portion became due. Answered for Lord Advocate, They had no claim though he had died before the father, because the estate was vested in the Crown 24th June 1745; 2dly, not due, because the condition failed by the son's survivance. The Court was unanimous to dismiss the claim on the second answer; and that the term of payment of the portions could have no influence on the condition "if there be no heir-male of the marriage," which always respects the time of the father's death; and I mentioned the case 7th July 1738, Drummond against Drummond;* and Drummore proposed to found our judgment on that sole reason; but the President said that as we were agreed to dismiss the claim, it was unnecessary to determine other points that were disputable, and perhaps not yet decided; that he looked upon these provisions payable after the father's death only as a sort of succession that could not compete with creditors, and not as proper debts; but that this was an improper case for considering or deciding that point, and therefore moved to dismiss the claim, without giving any reason, and to that we agreed.

* No. 2. *voce* CONDITION.