

CONDITION.

1733. *November 27.*

CAPTAIN HALKETT *against* SIR GEORGE WARDLAW.

No. 1.

A CONTRACT of marriage bearing, “ and in respect the said lands are
 “ provided to heirs-male, so that in case there should only happen daugh-
 “ ters to be procreated of this marriage, or that the sons to be procreated
 “ thereof should happen to depart this life in their minority, or before
 “ their father unmarried, or without lawful children of their bodies surviv-
 “ ing their father, and that there should be daughters living until they
 “ attain the age after specified, the said daughters might be excluded from
 “ any interest in the estate; therefore the father obliges him to pay to the
 “ said daughters the sums underwritten at their respective ages of 16 years
 “ complete, or at their marriage in case they may be married before that
 “ time.” There was issue a son and three daughters; the son survived the
 father, and enjoyed the estate 18 years, and then died unmarried; and the
 daughters in name of their trustee now pursue the next heir-male for their
 provision; but the Lords found that the conditions of their provisions did
 not exist, and that they are not due. See PROVISION TO HEIRS AND
 CHILDREN.

1738. *July 7.* DRUMMOND *against* DRUMMOND.

No. 2:

FOUND that provisions to daughters were not due, where the condition
 was, “ if after my death there be no heirs-male in life of this marriage,” a
 son having survived, but died in infancy unentered.

1744. *November 20.* JAMIESON *against* TELFER.

No. 3.

AN eldest brother having, at the father's desire, given a bond of provision
 to his younger brother, a travelling chapman, payable after the death of

- 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 obligation 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 obligation, 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