

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, *Imo*, that the heir male burdened, plainly comprehended the son, as well as the other heirs male. *2do*, 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