which is declared to be on account of the provisions to her in her mother's contract, *proviso* that it should not prejudge the said contract if she should be found to be thereby entitled to more. The son lived till 1741, and then died unmarried, but he must have been more than 27, his mother having died in 1744; therefore the daughter brought a process against her father for payment of the remaining 2000 merks, to make up 5000, or otherwise to secure the succession of the whole 15,000 merks to her. I thought, as majority and marriage were put on the same footing, it could not be the intention of parties, by the clause heirs-male procreate attaining to majority or marriage, that though there should be a son of the marriage who should be himself married, and perhaps provided by the father, who should afterwards die before him, that therefore the father should be liable to his daughters for their special sums, and therefore I thought the son having survived majority, the condition of these special provisions had failed; but thought the pursuer, if she survived her father, entitled to be heir of provision of the 15,000 merks; but as the father has now a second wife, and a son and four daughters of that marriage, and a small fortune to divide among all his children, he had a rational power of administration; and therefore now that the pursuer was married and had got 3000 merks 25 years ago, which with interest would now be 7000, he might lawfully provide what remained to his other daughters. Justice-Clerk said, that a son of a marriage may in his father's life receive implement of provisions to heirs of a marriage, so as to bar other heirs,—therefore had the son been married and provided, the pursuer would have been barred; but it will not follow that his majority, without being provided, would bar her; but I doubt of the answer, or that the son's being provided or not by his father, would alter the case. It is true, were the question on the first clause, where heirs-female are substituted to heirs-male, the son's discharge on implement would bar the substitutes, though he should die before the father: But the question is about the parties' meaning in the second clause,—the special portions to daughters, which the son could not discharge nor receive implement of,—and, if the condition existed, behoved to be due, whether the son discharged his provisions or not;—and if the condition did not fail by the son's marriage, though in his father's life, I doubted if the father's giving him a provision would alter the case if he died before his father, and so could not be heir. However, the Lords found the 2000 merks due, but no interest from the pursuer's marriage, which they claimed.—7th February Adhered, and found it in full of all her claims.

DAMAGE AND INTEREST.

No. 1. 1734, July 5. M'CULLOCH *against* M'CULLOCH of Polton.

FOUND no damages or expenses besides the expenses of this process;—and expenses of adjudication not competent *hoc statu*.

No. 2. 1745, Feb. 28. PATERSON *against* KEITH of Bruxie.

IN this case we allowed no consequential damages, and therefore none of the expenses of the pursuer's process with the Baxters of Glasgow, to whom Paterson sold the wheat;

nor did we think that the rate at which the pursuer sold the wheat, or the damage he paid the Baxters, could be the rule. But we found (which will come to much the same) the pursuer entitled to the difference betwixt the price he was to have paid Bruxie, and the current price at Bo-ness, when Drummond's ship arrived.

No. 3. 1753, Dec. 14. ELSPETH STEWART *against* AARON GRANT.

AARON GRANT had some cattle stolen from him, for which he sued this woman's husband, called Stewart, and another Stewart, his brother-in-law, criminally, before the Sheriff of Banff. The brother-in-law was by the jury found guilty of outhounding the thieves; but the pursuer's husband was acquitted, that is, the libel found not proved, in 1748. In 1751 her husband pursued him in this Court for damages and expenses, by defaming him and by his imprisonment before raising the criminal libel, and expenses of the trial. Lord Kilkerran allowed a proof before answer of all facts. After the pursuer's death, his widow, (now pursuer) on a decreet-dative carried on the process, and brought a strong proof for her husband's character, but these were facts which seemed to several of us a very convincing proof of actual theft committed by him of one cow from another person, whereof the value was paid the owner, and of his haunting with thieves. When the proof came to be advised, there were two questions, 1st, touching the competency of this process, when no expenses had been given or demanded in the inferior Court; and next, if there was sufficient cause proved to justify this defender from having been a malicious prosecutor. As to the first, the Court agreed that the process was competent as to damages before the trial, because these could only be properly awarded in the Court below; but as to expenses of that trial, the Court was divided; some thought that these expenses were accessory to that process, and could not be demanded by a new process if not sought there, and sundry statutes were quoted, which are marked on the printed state; and we generally agreed that such was the law in expenses of civil processes; and I could see no difference, nor reason of difference, betwixt them and criminal trials;—and upon the vote, it carried that this process for these expenses was not competent.—*Quibusdam renit.* particularly Drummore. Afterwards we found the pursuer entitled to damages, and repelled the defence.—*Renit.* Justice-Clerk, (in the chair) Kames, Woodhall, *et me.*

DEATH-BED.

No. 2. 1733, Dec. 20. CHRISTIESON *against* KERR.

THE Lords thought the setting a three 19 years tack not an act of ordinary administration, and therefore sustained a reduction *ex capite lecti* of such a tack. There were some other circumstances to prove the lesion, but this was the chief. The judgment was unanimous.