No 40. ed his heirs of tailzie with the payment thereof, upon this very cause and consideration, that they were to have the fund out of which these bonds were to be made effectual, it follows, That if the Ladies chuse to quarrel their father's settlement and obtain another provision out of his estate, the provisions must fall to the ground as *sine causa.* Found, That the bonds of provision and bond of tailzie are to be judged as of the same date, and as one total settlement, made by John Earl of Dundonald of his whole estate; and that the pursuers cannot have access to such of the lands contained in the said tailzie, as were in *hæreditate jacente* of their grandfather, and provided to descend to the heirs of line, without quarrelling or impugning of the settlement made by their said father; and that therefore they are not entitled to claim both their bonds of provision, and likewise their succession to the said lands, which were in *hæreditate jacente*, but that they are entitled to claim either the one or the other at their option.

Fol. Dic. v. 1. *p.* 427.

SECT. VIII.

Obligations, or Renunciations, granted upon an expectancy disappointed, or upon the suppofition of a fund of payment of which the party is afterwards deprived.

1609. *December* 5. BALLAGANE *against* SIR JOHN ARNOT.

No 41.
A bond granted by an apparent heir, during his father's sickness, for composition of his marriage, was sustained, tho' the marriage fell not, the father having recovered.

THE Laird of Ballagane, younger, alleging, that he was charged by Sir John Arnot, under the pain of horning, to pay to him 1000 merks, suspended, affirming, that if he was anyways debtor, or had given his bond for that sum, it was for the composition of his marriage, by the which, he being informed that his father was deadly sick, he had dealt with the treasurer, who having set down that composition, took the pursuer's bond for that sum of 1000 merks as borrowed money, and his father being convalesced, whereby the ward fell not, the bond was given without any true or lawful cause, and so he might lawfully repeat the sum *condictione, causa data causa non secuta*, especially seeing the signature was not past the seals, and the treasurer could not be charged with it. To this it was *answered*, That the bond was pure and simple, making no relation to any casualty or composition; and as, if he had received the composition in actual payment, the same cannot be repeated, because the treasurer will give double gifts of escheat which cannot be profitable to both the donatars, and will give infeftments of recognition, gifts of non-entries, wards, marriages, liferents, and all other casualties *periculo petentis*, and will

never be obliged to warrant them; and albeit they be found unprofitable, or founded upon false or null grounds, yet the composition is never repeated; so, in this case, he could not be compelled to discharge the obligations. In respect whereof, the letters were found orderly proceeded. No 41.

Fol. Dic. v. 1. p. 429. Haddington, MS. No 1677.

1684. *December* 19.

The DUTCHESS of LAUDERDALE *against* The EARL of LAUDERDALE.

No 42.
An heir male ratified a disposition of part of his brother's lands in favour of his brother's lady, and obliged himself to purge incumbrances affecting the lands. This was done in the view of succeeding to the rest of the estate. It afterwards appeared, that when he subscribed the ratification, there was an expired apprising which would carry off the rest of the estate. In these circumstances, the Lords found, that the heir was not obliged to fulfil his obligation, unless he had known of the apprising.

THE Earl, and the Lord Maitland his son, in the Duke of Lauderdale's lifetime, signed a ratification of the rights of Leidington, Duddingston, &c. disponed by him to his Dutchess: They being charged on this ratification, suspend on this reason, that it was but a conditional obligement, and a *synallagma* granted for a cause which had not existed, and so was null *per condictionem chirographi ob causam datam causa non secuta*, in so far as the ratification was given in contemplation *et intuitu* of the tailzie and succession to the Duke, as appears from its narrative, and the tailzie was the *causa finalis* and *procatarctica* of the ratification; but *ita est*, he neither had succeeded nor could, there being an expired comprising of the Duke's estate, led by Anderson of Hill in 1655, unpaid, which was a *medius obex et impedimentum*, debarring him from the succession; so that if he were to serve heir of tailzie, and that apprising were objected, the inquest could neither say nor retour that the Duke died last vest and seased as of fee; so the two things requisite to make up the *condictio causa data*, &c. are here, viz. *Aliquid esse datum factum vel solutum sub causa vel conditione*; 2*do*, *Illam causam non esse secutam, illamve conditionem non esse impletam:* And conditions implied *ex natura rei*, and from narratives, may be as pregnant as if they were set down in the most express terms of *if*, and the other hypothetical particles; or, *per ablativos absolute positos*. *Answered*, The cause of giving the ratification was the making of the tailzie, which is done and performed, and so *causa est secuta*; and the ratification obliges them to purge all debts and incumbrances, *ita est*, that incumbrance is a debt; and what my Lord Lauderdale meant *non refert*, seeing *propositum in mente retentum* (especially if it be an equivocation contrary to the express tenor of the writ,) *nihil operatur*. *Replied*, To make the naked granting of the of the tailzie the sole onerous cause of the ratification is ridiculous; for it was the actual succeeding which was the cause; so, if I cannot succeed, then I cannot ratify: And the obligement to purge debts is only of such as properly are debts, as comprisings within the legal, &c. but an expired comprising ceases to be a debt, and becomes a right of property. The LORDS before answer ordained the said comprising to be produced.

But Lauderdale being dissatisfied with this, and pressing to have a decision *in jure* on the relevancy of his allegeance; the LORDS, on the 23d of Decem-