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;