No 153. event was likewise in view, of her predecease. Mr Somervell was ill before his marriage, as well as at the date of the bond; but it is plain the parties have not so relied on the judgment of physicians, if any such was given, as not to expect his longer survivance. With regard to the bonds remaining in the granter's power, it is apprehended, whatever he might have done in fact, he could not have justly destroyed it.

"THE LORD ORDINARY found that the bond was granted by Mr Forrester to the defender *intuitu* of the marriage then subsisting betwixt them; and, in regard that the marriage dissolved by Mr Forrester's death, within year and day, without a living child procreated of the same, therefore sustained the reasons of reduction, that the said bond was thereby become void." And, on two bills, and answers, 26th February, and this day, the LORDS adhered.

Act. *R. Craigie, J. Erskine.* Alt. *H. Home.*

D. Falconer, v. 2. *No* 223. *p.* 268.

*** Lord Kames's and Lord Kilkerran's reports of this case are No 373. p. 6161. *voce* HUSBAND and WIFE.

1752. *December* 1.

GRIZEL, MARGARET, and RACHEL MARJORIBANKS, *against* ANDREW MARJORIBANKS.

No 154.
No claim found to lie on a bond of provision to a younger son, at the instance of his next of kin, in respect he died before his father.

IN the year 1730, Andrew Marjoribanks of Marjoribanks, father of the above parties, executed a bond of provision in favour of his younger children. To each of his daughters he provided a certain sum, and 6000 merks to a younger son, Alexander. All these provisions were made payable at the first term after they should respectively attain the age of fifteen, with penalty and interest from the term of payment; and if any of the said children should die before majority or marriage, the portion of such child was to return to the disponer's eldest son for the time being. Alexander, above mentioned, attained the age of majority, but died before his father, in the year 1741. In the year 1742, Majoribanks being upon death-bed, restricted the provisions made to his three daughters, (the pursuers) to the sum of L. 525 Sterling; and declared that sum to be in full of all they could claim from him by and through his decease, or otherwise; and also revoked all former testaments by him made in their favour.

The pursuers, as three of the six nearest of kin to their brother Alexander, insisted against their eldest brother Andrew, for payment of their respective shares of the 6000 merks contained in Alexander's bond of provision; and *pleaded*, That the bond was due as soon as Alexander attained the age of fifteen; with this limitation, indeed, that if he died before majority, it should return to his father's eldest son; that therefore Alexander's right became absolute, and without limitation, from the time that he attained majority, and conse-

quently was effectual to those who might succeed to him, either by will or *ab intestato*. No 154.

Pleaded for the defender, A provision made for a younger child is intended for the subsistence of such child after the death of his father; and, therefore, if the child die before his father, the provision is voided *ob non causam*; and this more especially, if such provision be constituted in a deed of a testamentary nature; it is then a legacy, or at least *mortis causa donatio*; and, according to a known maxim in law, must become void, by the predecease of the legatee or donatar. Alexander could never have claimed under this deed, which the father retained in his own possession, which he could have revoked at pleasure, and in effect did revoke; for it cannot be supposed that he intended that the provision in favour of his deceased son, Alexander, should still remain in force, when, by the deed 1742, he restricted the provision formerly granted to his daughters, and revoked all prior testaments made in their favour. Alexander then was not creditor in the bond 1730; and if he was not creditor in it, his executors cannot be received to claim under his right.

"THE LORDS found that the pursuers have no claim on the provision to Alexander, in respect he died before the father."

Reporter, *Elchies*. Act. *J. Ferguson, A. Lockhart*. Alt. *R. Craigie, & R. Dundas*. Clerk, *Gibson*.

D. *Fol. Dic. v.* 4. *p.* 185. *Fac. Col. No* 40. *p.* 61.

1767. *January* 21. HELEN BINNING *against* JAMES BINNING.

No 155.
Where children predecease their father, the provisions made for them, in the father's settlement, go to grandchildren, though the heirs of the children be not mentioned.

IN 1733, James Binning executed a deed of settlement of his affairs, giving certain liferent-provisions to his wife, and portions to his younger children. He nominated his wife, Helen Glendinning, sole executrix, with the burden of his debts, and aliment of the younger children; and then, with consent of James Binning, his eldest son, he binds and obliges himself, his heirs, &c. to content and pay to Patrick and Margaret Binnings, his younger children, 500 merks Scots each, at the first term after their mother's death; and, failing either of the said children by death, before majority, the portion was to divide equally between the eldest son and surviving child. Then follows a clause dispensing with the not delivery, and declaring that the same should be as sufficient to the wife and younger children, as if a separate disposition, or bonds of provision, had been delivered to them respectively.

Soon after executing this deed, Patrick Binning, the second son, married; but there was no contract of marriage, or settlement, entered into by him on that occasion. Patrick did not long survive his marriage, having died many years before his father or mother, leaving one daughter, Helen, who, upon her