No. 4. 1736, Feb. 17, June 25. RANKINE *against* RANKINE.

THE Lords found that "heirs and bairns" made all the bairns heirs of provision in heritables as well as moveables, this not being a Gentleman's contract of a land estate; and found that the taking the heritable bond to heirs and assignees in general did not alter their right, though they thought the father had the power of division, and might by an explicit deed have given these bonds to the eldest son. They also found the disposition on death-bed by the father Patrick to his younger children could not prejudge his eldest son's heirs of his share of the provision, and that the son could not on death-bed discharge that provision; and found that the holograph discharge *non probat datam*, but found that the subjects given the son Walter at his marriage settlement behoved to be collated, (though if it had not been given at his marriage settlement, the President thought it would not collate, and I believe rightly,) but 17th February 1736 remitted to the Ordinary to allow the defender to astruct the date. And the last point anent imputing the subjects given Walter, being reclaimed against, was unanimously adhered to, 25th June 1736.

*** On the 24th in the case Clerks against Robertson, the Lords found there was sufficient presumptive evidence that in Bessie Clerk's contract of marriage, to which her father Andrew was a party contractor, 1200 merks of tocher was provided to be paid by the said Andrew; and found that the 1200 merks must be imputed in satisfaction *pro tanto* of her share of the provisions in the said Andrew's contract of marriage.—21st July, The Lords adhered.

No. 5. 1737, Jan. 7. JEAN TRAIL *against* JOHN TRAIL of Elseness.

THE Lords adhered to the Ordinary's interlocutor. We generally agreed that notwithstanding the destination in the contract of marriage to the heirs whatsoever of the marriage, that the father might prefer the heirs-male to the heirs-female of the marriage. Only Lord Kilkerran, Drummore, and Strichen differed, and I thought likewise the acceptance of Patrick Trail sufficiently qualified. But they did not go upon this but upon the point of law, and adhered as above.

No. 6. 1737, July 13. CHRISTIAN STENHOUSE *against* JEAN YOUNG.

THE Lords repelled the defence founded on Stenhouse the father's intromission with the rents of the house in Liberton's Wynd, and they also thought there could be no collation in heritage, (but gave no interlocutor upon it, and indeed the defence as laid was nonsense.) But they found that Jean and Christian Young were heirs of provision and creditors to their father in the 6000 merks in his contract of marriage as well as in the conquest; that the 2000 merks found to Christian's husband in name of tocher did impute in part payment of her share; that therefore she, and now her daughter Christian Stenhouse, pursuer, remained creditors only in 1000 merks, and that Jean remains still creditor in 3000 merks, and that these sums must be paid *primo loco* out of the father's estate and rents thereof, and only the remainder to divide, and remitted to the Ordinary to proceed accordingly.—13th July, The Lords adhered.