The Lords found it no nullity, but at most, that it would only restrict the adjudication. And having considered the discharge, they thought, that if this cautionry had been intended to be discharged, they would have specially mentioned it, and given an assignation to the bond for the cautioner's better recovery of his relief; and, therefore, found this discharge did not extend to, nor comprehend that cautionry, as not being then *actum*, or under view.

Then the other creditors objected against Ramsay's and Lewing's debts, being tochers in their contracts matrimonial with Rig of Carberry's two daughters, amounting to 3000 merks; that their father, Rig of Carberry, being then *obæratus*, and having nothing but 35,000 merks in Sir Adam Blair's hands, who bought the lands, this will scarce pay his other debts; and it is juster his children lose than his extraneous creditors.

Answered,—This would militate against a bond of provision granted by parents to their children. But here being a tocher, given in a contract of marriage, it is onerous both as to the children and the wife's jointure; and he not being then under diligence, he was not incapacitated, but might give suitable provisions to his bairns, not being extravagant; and his son-in-law seeing no incumbrance upon him might contract, and become as onerous creditors as an other.

Replied,—That there was no diversity between the case of bonds of provisions and tochers; and in the case of the creditors and children of *Douglass* of Monsuall, and many others, the Lords always required that it should be proven the father had then a visible opulent fortune, able to pay both his debts and bairn's provisions.

Duplied,—That Rig of Carberry had so; but *ex eventu*, by the liferentrix, her long life, the sum came to be exceedingly diminished, and unable to pay them all, which eventual loss was not considered in that case of Monsuall's.

The Lords found a contract of marriage in a better case than a bond of provision, and that there being no diligence, they were creditors as well as the rest, the portions being moderate. *Vol. I. page* 523.

1692. *November* 29. Cubison *against* John Bell.

On a petition given in by Cubison against John Bell, that he could not be removed on the warning before Whitsunday, because the master had accepted the Martinmas rent thereafter; and he deponing, that it was with this express quality, that he did not pass from his warning; the Lords thought somewhat was to be indulged to the rusticity of tenants, where they had any probable ground of mistake, that it should supersede execution of the removing till Whitsunday next. But it being represented that the master was under tack to another, and was charged to enter him to that room; the Lords appointed trial to be taken of his damages, and if both the tenants could be accommodated where they were till next term, rather than put them to flit in the midst of winter.

Vol. I. page 524.