

PROVISION TO HEIRS AND CHILDREN.

---

No. 1. 1736, July 21. CLERKS *against* ROBIESON.

See Note of No. 4, *voce* MUTUAL CONTRACT.

No. 2. 1738, July 11. CASE OF BARGENY.

WHEN this case was first decided, 16th July 1736, it did not appear to me to be of great difficulty or intricacy, and therefore I marked nothing at that time, though the question carried in favours of Sir Hugh Dalrymple, by the accident that one of those whose opinions were against him was in the chair, for the Court was divided, six to six, viz. for him were Justice-Clerk, Minto, Kilkerran, Tweddale, Murkle, and I. Against him were Royston, Newhall, Haining, Dun, Balmerino, Leven. And the President and Drummore could not vote, because of their relation, grandfather and uncle; and Monzie was *non liquet*; and Strichen absent. But after that interlocutor, the dispute has been argued with much more accuracy, and great labour bestowed to bring precedents and authorities from the Register of Tailzies, the laws of England, &c. which, together with Miss Buchan's compearance for her interest, delayed the decision till this day, in which time the Bench had suffered a considerable alteration by Culloden succeeding the President, and Arniston's succeeding Newhall; and this day both Monzie and Strichen were also present. The first question determined was concerning Sir Hugh's objection to the retour of William Lord Bargeny, upon which alone any pretension Miss Buchan had did depend; and the Lords repelled the objection, that it did not appear to have been extracted out of the Chancery till after Lord William's death; for they found that the retouring it to the Chancery completed the right, and it being found in Chancery, they found presumed its being retoured *debito tempore*, unless evidence were given that it was not retoured till after his death. And the Bench was unanimous in this interlocutor, except the President and Strichen, who doubted. But they found that Sir Hugh Dalrymple was by the conception of the tailzie preferable to Miss Buchan in the succession, (only Justice-Clerk doubted), and in this we all voted, and even Arniston. But in the other part of the competition betwixt Sir Hugh and Sir Alexander Hope, Arniston would not vote, because his niece, Miss Dundas, who is also Sir Alexander's niece, is next in succession after Sir Alexander and his children. And though the Court seemed to think the ground of his declining himself not sufficient, yet he would not give any vote upon this point. There was little arguing on the Bench, it having been so fully argued before both on the Bench and in the papers. And upon the question, the former interlocutor was altered, and Sir Alexander Hope preferred to Sir Hugh in the succession, which happened by just the like accident as the former interlocutor, for including the President we were divided seven to seven; viz. for the interlocutor, Royston, Justice-Clerk, Dun, Balmerino, Monzie, Haining, Leven. Against it were the President, Minto,