Strichen, Kilkerran, Tweddale, Murkle, and I. Drummore could not vote; and Arniston would not.—*N. B.* Justice-Clerk declared the reason of his altering his former opinion to be in consequence of the former interlocutor against Miss Buchan; that he thought the foundation of Sir Hugh's preference to Sir Alexander was, that heirs-female imported the same thing with heirs whatsoever; and if it did, then he thought Miss Buchan preferable to Sir Hugh; but since the Lords, by preferring Sir Hugh to Miss Buchan, had in effect found that these two did not import the same thing, then he thought, as a consequence thereof, that Sir Alexander was preferable to Sir Hugh, 17th January 1738.

ON advising Messrs Buchans reclaiming bill and answers for Sir Hugh Dalrymple and Sir Alexander Hope, (5th July) the Lords adhered to the interlocutor 17th January last preferring Sir Hugh, only Justice-Clerk and Strichen dissented. But as to the competition betwixt Messrs Buchan and Sir Alexander, many of us thought, that in the order of succession settled by the tailzie, as Sir Hugh and his brothers and sisters, and their issue, were preferable to Miss Buchan and the other descendants of Lord William, so we thought she was called before Sir Alexander Hope, as descended of Mrs Nicolas, though he had no present title to the estate. But since Sir Alexander stands preferred by the former judgment, we agreed that he must of consequence be preferred to Miss Buchan. But the President was unwilling to give an express interlocutor preferring her, in case the judgment should be altered, and therefore it was delayed till to-morrow to consider the wording the interlocutor.—(See the Note relative to this case, *voce* RETOUR.)

No. 3. 1739, Jan. 16. WADDELL *against* WADDELL.

A FATHER conveyed his effects to his two children, James and Margery Waddell, equally betwixt them, and failing either of them by decease before marriage or majority to the survivor, their heirs, executors, or assignees. The daughter married, and her husband was said to be very unfrugal, and in hazard of squandering away his wife's means, wherefore the brother, when past the age of 18 years, made a settlement of his half of the succession, which was all in moveables, to his sister in liferent, and her children in fee, and failing children, to certain substitutes, whom he burdened with some legacies, in case the succession should devolve to them. This deed was quarrelled by the sister as *ultra vires*;—and coming of course before me, I reported it without informations; and the question was, Whether the settlement by the father was a simple destination, which, if it was such, might be altered by the son, though minor, by way of testament, since the subject was moveable; or if it implied a limitation on the children not to alter? and it was agreed, that had their substitution been in general to the survivor, it would not have implied any limitation; but the substitution being only failing any of the children before majority or marriage,—the Lords, the 5th current, found that the son having died minor and unmarried, could not disappoint the father's destination; and this day adhered, and refused a reclaiming bill without answers. I own I was at first against the interlocutor, but since it was pronounced, was not for altering. Arniston was not present at first, but was for the interlocutor, as was the President.