

## GROUNDS AND WARRANTS.

1771. *July 24.* EARL OF ABERDEEN *against* IRVINE OF DRUM.

IN respect the general and special charges are not the grounds, but warrants of the decreets of adjudication, which the defenders are not obliged to produce after 20 years; therefore find, That the petitioners are not obliged to produce either the said general or special charges, or any other warrants of the decreets; 28th February 1771, Earl of Aberdeen *against* Irvine of Drum.

Adhered to, 24th July 1771, with this addition:—"In respect of the reason mentioned in the former interlocutor, and that general and special charges are not part of the pursuer's title, but produced as evidence of the passive title against the defender; and also, in respect of the former decisions of this Court, and acquiescence of the nation therein, therefore adhere to the former interlocutors concerning said general and special charges.

Fount. I. 675.

## HEIRS-PORCIONERS.

1773. *February 16.* CATHCART *against* ROCHEAD.

A *præcipuum* is due to the eldest heir-portioner succeeding *ab intestato*; which the law allows to her on account of her birth and seniority, without paying an equivalent: but where heirs portioners do not succeed *ab intestato*, but as heirs by a special deed, no *præcipuum* is due: the indivisible subjects will go to one, paying a recompense in money to the rest.

Accordingly, the estates of Inverleith and Darnchester, going to four heirs-portioners equally, by and in virtue of a tailyie and settlement made by old Sir James Rothead; and Mr Cathcart of Carbrester, the heir of the eldest heir-portioner, having claimed a *præcipuum*, "The Lords, 16th February 1773, found that, in this case, the claimant, James Cathcart, as in the right of the eldest daughter, is not entitled to a *præcipuum*, as in the case of heirs portioners; and remitted the cause to the Sheriff to proceed accordingly;—reserving to the parties to be heard before him, to whom the mansion-house, offices, garden, and planting about the same shall belong, he paying a recompense."

Against this interlocutor Mr Cathcart having reclaimed, the petition was appointed to be answered. But no answers were given in; the point was settled between them amicably.