

No 50.  
a recommendation in order to procure a pass to retire effects from France. The pass was not procured, yet the wine was found due, without regard to the arrival of the ship.

being informed that Mr Gordon had some wine arrived at Leith, pursued him before the Judge-Admiral for delivery of the piece of wine, or L. 12 Sterling as the price of it, and obtained decret.

Mr Gordon offered a bill of suspension, upon these grounds, *1st*, The performance of the obligation being conditional upon the recommendation's taking effect, and the arrival of the ship the Royal Ann at Leith, and the condition never existing, the obligation fell.

*Answered* for the charger ; The condition of the obligation could not be taxative as to the Royal Ann ; for the wine might have been shipped in the Royal Ann, and she perishing by the way, brought home in another bottom ; or Gordon, who inclined at the date of the obligation to transport his effects in the Royal Ann, might have afterwards altered his resolution, or the name of that ship might have been changed. *2do*, If Gordon had designed to oblige himself only upon the event of the success of the recommendation, he should have expressed it so ; for, *in dubiis*, words are always explained *contra proferentem*.

THE LORDS refused the bill.

*Forbes, p. 39.*

1738. July 7.

DRUMMOND *against* DRUMMOND.

No 51.

PROVISIONS to daughters, failing heirs male, are not due, if an heir male survive the granter ever so short a time.

*Kilkerran, (PROVISION TO HEIRS AND CHILDREN.) No 1. p. 455.*

1754. February 26.

DOROTHEA PRIMROSE, and Sisters, *against* His MAJESTY'S ADVOCATE.

No 52.  
The condition *si sine hærede masculo decesserit* disappointed by the existence of a son, tho' he outlived the father but two months.

BY a contract of marriage, dated 1724, between Sir Archibald Primrose and Lady Mary his wife, the former is bound to resign his lands, &c. to himself and heirs male of that marriage ; which failing, to the heirs-male of any subsequent marriage ; which failing, to his other heirs of tailzie ; with the following proviso in favour of daughters. ' And, farther, in case there be no heir-male, but allearly a daughter or daughters of this marriage, &c. and that they shall be ' debarred from succeeding to the estate by Sir Archibald's other heirs-male ; ' then, and in that case, Sir Archibald binds him and his heirs-male and successors in the foresaid lands, to make payment to the daughter or daughters, &c. ' viz. if one, 24,000 merks ; if two or more, 36,000 merks, &c. and that at ' the first term of Whitsunday or Martinmas after his decease, &c. with annual- ' rent thereafter.'

Upon the 15th November 1746, Sir Archibald suffered death for high-treason, leaving issue one infant son and seven daughters. In January 1747, his son died. The daughters entered a claim for the 36,000 merks.