1770.

CHATTO, &c. *v.* BAILLIE.

After hearing counsel, it was
Ordered and adjudged that the interlocutors complained of be reversed.

For Appellants, *Ja. Montgomery, Al. Forrester.*
For Respondents, *Al. Wedderburn, Andrew Crosbie.*

*Note.*—Unreported in Court of Session.

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(M. 14,941.)

JOHN CHATTO, Esq., an Infant, and his Administrator-at-law, - - - } *Appellants;*
WILLIAM BAILLIE, Esq., - - *Respondent.*

House of Lords, 26*th March* 1770.

SUCCESSION—HEIRS.—IMPORT OF TERM "HEIRS," as used in a destination.

For a full report of this case, *vide* Morison, 14,941.

In a competition of brieves between Agnes Tennent and William Baillie, claiming to succeed to the estate of Stoneypath, under a destination "to A. and his heirs or assignees "in fee; whom failing, to B. and his heirs and assignees," with which were conjoined mutual declarators, the Court of Session held that B. (the respondent William Baillie), being *nominatim* substituted, on failure of heirs of the body of A., was entitled to be preferred to Agnes Tennent, on the principle that the term "heirs," as here used, was to be limited to the *heirs* of the *body* of *A.* Reversed in the House of Lords; it being "declared that John Chatto (son "of Agnes Tennent), is preferable, and entitled to be served "heir of provision to the deceased Mr. William Walker, "under the settlement made by him of his estate of Stoney-"path in 1752; and it is further ordered and adjudged "that the objection to the service of the said John Chatto "be repelled, and that the mutual declarators be conjoined, "and that the said John Chatto be assoilzied from the pro-"cess of declarator at the instance of the said William Bail-"lie, and that the Court of Session do find, in terms of the "declarator at the instance of Agnes Tennent, mother of "the said John Chatto, against the said William Baillie; "and it is further ordered that the said Court of Session do

1770. " give all necessary and proper directions for carrying this " judgment into execution."

GRAHAME, &c. v. M'NAIR.

For Appellants, *J. Montgomery, John Madocks.*
For Respondent, *Al. Wedderburn, Thos. Lockhart.*

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JOHN GRAHAME, JAMES COULTER, and Others, Underwriters of the Ship "The Jean," and her Cargo, - - - } *Appellants;*

ROBERT M'NAIR, - - - *Respondent.*

House of Lords, 29*th March* 1770.

MARINE INSURANCE—DEVIATION.—Held that deviation of the ship in the course of the voyage insured, must be wilful, in order to void the policy, and that accidental or involuntary deviation will not have that effect. Circumstances in which held wilful deviation not proven.

This was an action brought for a loss on a policy of insurance for £1000, effected on the ship Jean and her cargo, on her voyage from Virginia to Barbadoes. The ship, on proceeding on her voyage, struck on the island of Bermudus, and was lost.

When the insurance was effected in Glasgow the ship was then in Virginia, and the respondent's son was there in charge of her, as master, promising to sail in ten days.

She sailed on the 25th June, but, in consequence of losing an anchor, she put back, and again sailed on the 27th June.

June 27, 1750. Of this latter date, the son wrote the respondent, his father, giving him a fresh account of what cargo was on board—the value thereof, and urging additional insurance, stating " be sure you do not neglect to insure the above " value of yours in time; for there is an island called Ber- " mudus, that lies betwixt Virginia and Barbadoes, that I " am very much afraid of; and there is strange notions run " into my head that I will meet with some accident about " it."

This letter was shewn to one Jamieson of Glasgow, in order to effect a further insurance; but, upon reading it, he refused, assigning as his reason, that the goods were overvalued, and he did not like the dreaming part of it, which appeared to him to look like a waking dream.

The respondent then applied to Stalker, an insurance-broker, for an additional insurance, to the extent of £350,