

minor; and consequently, *Elizabeth* could not then have attained the sixteenth year of her age. Hence, when *Margaret Russell Clerklee* said, that '*Eleanor, Caroline and Elizabeth* were of an age capable of judging what was for their advantage,' she could have had no reference to the legal age of sixteen, when the law gives to a female a capacity to receive her estate; (g) or indeed to any thing more than her opinion of the then natural capacity of her children. It is proved, that *Margaret Russell Clerklee*, and *James Clerklee* signed this letter; but there is no proof of the other signatures.

After the receipt of this letter, the trustee *William Dawson*, in a letter, dated on the 9th of July, 1818, and addressed to *James Clerklee*, the husband and parent of these legatees, says, 'I have much pleasure in stating to you, Mr. *J. Clerk* has consented to the legacy being transferred to this country; and further, what probably you have not much idea of, that by the advance in price in the funds, and some interest, since the death of Major *Clerk*, the amount paid to my bankers is £2,406 14s. 2d. sterling.' This surviving trustee *Dawson*, thus distinctly states, that he had sold the public stocks of Great Britain in which this legacy of £1,500 had been invested; and the sum which he had received for it.

It is stated and admitted, that *James Clerklee* and his wife *Margaret Russell Clerklee* are both dead; and it is admitted, that at the time of her death she left six children; *Ann Russell Contee*, the wife of *Philip A. L. Contee*, *Eleanor Contee*, the wife of *Edmund H. Contee*, *Caroline Ashton Hawkins*, the wife of *Josias Hawkins*, *Elizabeth Clerklee*, now of full age, and *Margaret Clerklee*, and *Sarah Emily Clerklee*, who are as yet unmarried infants. And further, that the trustee *William Dawson* is dead, and that the defendant *Eleanor Dawson* is his executrix.

The defendant *Eleanor Dawson* insists, that by an express provision of the will of the late *Ann Russell*, the matter in controversy should have been submitted to arbitration; and that no suit can be sustained by these plaintiffs at all, or at least not until they have shewn an attempt, on their part, to obtain a decision in that way. And this defendant further urges, that all the parties who have an interest in this matter, and who ought to be here, have not been brought before the court. These preliminary objections must

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(g) 1715, ch. 39, s. 15; since altered by 1829, ch. 216, s. 5, and 1831, ch. 305, s. 5.