

## PROVISION TO HEIRS AND CHILDREN.

### SECT. I.

In Provisions to the Issue of a Marriage, whether the Children succeed *per capita*, or if the Heir is preferred?

1663. February 17. MARGARET HAY *against* SIR GEORGE MORISON.

SIR GEORGE MORISON having granted a bond to umquhile John Bell and Margaret Hay, the longest liver of them two, in conjunct fee, and, after their decease, to the bairns of the marriage; the said Margaret, with concurrence of the bairns, charges for payment. Sir George suspends on this reason, that Margaret is but liferenter, and the bairns of the marriage are but fiars; and, therefore, seeing there was an infeftment upon the said bond, he ought not to pay the sum, till the bairns be infeft as heirs of provision of the marriage to their father, and renounce the infeftment.

THE LORDS decerned; but superseded the extract, until the bairns were infeft, as heirs of provision to their father; and did grant renunciation; and found, that all the bairns, male and female, jointly and equally, behoved to be served as heirs of provision to their father in this annualrent, and infeft accordingly; and that by bairns was not to be understood the heir of the marriage only.

*Fol. Dic. v. 2. p. 275. Stair, v. i. p. 180.*

\* \* Gilmour's report of this case is No 49. p. 4256. *voce* FIAR.

No 1.

By a clause in a bond, the sum was made payable to the man and wife, in conjunct fee, and to the children of the marriage; whereon infeftment followed to the man and wife. The sum was found not payable to the wife, till all the children were served heirs of provision in the annualrent, and were infeft and had renounced.