

as with their mother's liferent. The circumstance, of the defender's succeeding as heir before he attained the age at which the provisions were exigible, seems likewise to be material, since no claim ever could be entered by him as a younger child. See IMPLIED CONDITION.

No 150.

Answered, When sums of money have been provided to younger children in general, it may be admitted, that the distribution ought to be made among those only to whom this character is strictly applicable. The decision, however, must be different, where the provision is in favour of the particular children, *nominatim*. Here there is no room for arguments of presumed intention, because the words are clear. Each party lays claim to the sums allotted to him, not as a younger child, but as specially favoured by the deed.

But, in the circumstances which here occurred, the defender is still to be considered as a younger child. His claim, as such, the moment his elder brother became proprietor of the lands, was completely vested, though the term of payment was postponed to a period more remote, and the subsequent events could not create any alteration.

THE LORD ORDINARY had found the defender liable for the whole 1500 merks; but the case being brought under review, in a reclaiming petition for the defender, with answers for the pursuer, the Court, moved by the circumstance of the younger children being mentioned by name, found, that the defender was only liable to the pursuer in the half of the 1500 merks, and remitted to the Lord Ordinary to proceed accordingly.

Lord Ordinary, *Ellick.* Act. *Elphinston.* Alt. *Wight.* Clerk, *Orme.*
C. Fol. *Dic. v. 4. p. 188.* Fac. *Col. No 276. p. 425.*

1789. June 26.

THOMAS WOOD, as Administrator-in-law for his CHILDREN, *against* THOMAS AITCHISON.

JOHN AITCHISON, the father of Thomas Aitchison, in his marriage-articles, became bound, during the subsistence of the marriage, "to lay out L. 400 upon land in Scotland, or upon other good and sufficient security there, heritable or personal, for annualrent, and to take the rights and securities of the land, or of such other security for annualrent as aforesaid, in favour of himself and his wife, and longest liver of them, in liferent, and to the children or child to be procreated betwixt them, whom failing, to the said John Aitchison, his heirs and assignees whatsoever, in fee."

No 151.

The issue of children, predeceasing the term of payment, are entitled to that share which their parent could have claimed.

Of this marriage there were four children, who survived their mother; but at the death of John Aitchison, the father, only one son, whose name was Thomas, was alive. Another of the children, however, a daughter, who had been married to Thomas Wood, left issue.

No 151.

An action was brought by Mr Wood, as administrator-in-law for these children, against Thomas Aitchison, for having it found, that they had right to one half of the sums provided in the marriage articles. THE LORD ORDINARY gave decret in favour of the pursuers.

The defender preferred a reclaiming petition, in which he *contended*, That although, in bonds of provision granted to children *nominatim*, and payable at the father's death, the right might transmit to the descendants of those who predeceased their father, the law was different where the provision was in favour of children *nascituri*. In that case, he *contended*, The children had only a contingent or eventual right depending on their surviving their father.

The Court were of opinion, that in all provisions of this sort, the issue of children predeceasing the term of payment, were entitled to that share which their parent could have claimed; and therefore

THE LORDS refused the petition.

Lord Ordinary, *Justice-Clerk*.

For the petitioner, *Wight*.

C.

Fol. Dic. v. 4. p. 185. Fac. Col. No 75. p. 136.

SECT. XIX.

Where the Provision is not made by a Contract of Marriage.

1749. *June 28. & July 8. AINSLIE against ELLIOTS.*

No 152.

BONDS of provision, though irrevocable, and out of the hands of the granter, if only payable at his death, will fall by the children predeceasing the father, yet where such bonds are absolute, so as *statim debeantur*, they will not fall by the child's predecease.

And accordingly Thomas Porteous having disposed his estate to his eldest grandchild, Thomas Ainslie, irrevocably, with the burden of L. 1000 to Andrew, his second grandson, the provision to Andrew was sustained, though he predeceased his grandfather.

Fol. Dic. v. 4. p. 186. Kilkerran, (PROVISION TO HEIRS AND CHILDREN.)

No 13. p. 466.