

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.