

No 52.

THE LORDS sustained the defence, That Magdalen Scot had accepted of her provision. See PRESUMPTION.

Reporter, *Shewalton.* Act. *Lockhart.* Alt. *R. Craigie.* Clerk, *Pringle.*

*Fol. Dic. v. 3. p. 124.* *D. Falconer, No 239. v. 2. p. 291.*

1763. June 16.

JOHN WISHART against MR GEORGE GRANT, Minister of the Gospel at Ruthven.

No 53.

A person bequeathed the residue of his effects to the children of his two sisters. A grandson of one of the sisters claimed a share. Found, that the legacy was confined to the immediate issue of the two sisters.

ALEXANDER ANNAND, a native of Scotland, went to Pennsylvania when very young, and, after remaining there many years, executed a testament, in which, after bequeathing to Elizabeth Annand, his brother's daughter, and, in case of her predeceasing him, to the surviving children of his sisters Anne and Barbara, the sum of L. 30; and, after leaving several other special legacies, he added a clause in these words: 'And, if there be any thing remaining, after my just debts, funeral-charges, and legacies are paid, I give and bequeath the remainder to the children of my sisters Anne and Barbara.'

Anne, the testator's eldest sister, had, by Alexander Hamilton her husband, issue, two daughters, Janet and Elizabeth, who were both alive at the time of their uncle's death, which happened on the 7th of September 1754.

Barbara, the other sister, who was married to Harry Wishart, had also two children, Harry and Isobel. Isobel was alive at the testator's death; but Harry had died before the testament was executed, leaving issue, one son, John Wishart.

The executors having remitted the residuary effects to Scotland, John Wishart claimed a fourth part in right of his father; upon which a question arose between him and Mr George Grant, who had acquired right to Elizabeth Hamilton's proportion, and was also empowered, by Janet Hamilton and Isobel Wishart, to receive their shares.

Objected by Mr Grant to John Wishart's claim; That his father having died even before the will was made, the residue of the testator's effects fell to be divided among his three nieces, who were the only surviving children of his sisters Anne and Barbara.

Answered for John Wishart, *imo*, The term *children* is by no means limited in its signification to a person's immediate issue, but, according to the best authorities in the English language, comprehends more remote descendants; *2do*, By the Roman law, grand-children are uniformly held to be comprehended under the general term *children*, when no particular person is pointed out; *L. 220. ff. de Verb. Signif.* Nay, in favourable cases, the term *son* was so interpreted as to include *grandson*; *L. 201. ff. eod. tit.*; *3tio*, There is nothing in the will tending to shew that the testator meant to confine his bounty to the immediate issue of his two sisters; and, as he had been abroad upwards of 30 years,

and could not be supposed to have entertained any particular affection for such immediate issue, with whom he was altogether unacquainted, it is more natural to suppose, that he meant to extend it to their families and descendants, though more remote.

*Replied* for Mr Grant; *1mo*, *Children* is a word in daily and common use, of a known and fixed signification, importing immediate descendants only; and, if a man had a family of ten children, and by each of these had five grandchildren, it would be the height of impropriety to say that he had sixty children; *2do*, In a case of this kind, where the question turns upon the import of a word in the language of this country, a resort to the authority of a foreign law, or to foreign lawyers, is extremely improper; as it is only an appeal to their opinion of the meaning of a vernacular word in their own language, which, though we may interpret it to have the same meaning with another word in our tongue, may, notwithstanding, admit of a more restricted or more enlarged signification. At the same time, the texts cited from the Roman law seem to have been adapted to particular cases, the peculiar circumstances of which are not known; and Voet lays it down as a rule, *lib. 36. tit. § 1. 22.* That the word *kinderen* in the Dutch, and *liberi* in the Latin, imports only immediate children, unless from other clauses or expressions in the deed it clearly appears, that the testator meant to use it in a more extensive signification. *3tio*, As the term used by the testator is of a known and determined signification, so, in this testament, there is not one word from which it can be gathered that he meant it in any other sense; on the contrary, it is plain that he only thought of the immediate issue of his two sisters; for, when he bequeaths L. 30 to his brother's daughter, he considers her only, and not her descendants, and, preferably to them, he substitutes the children of his sisters; which is a clear proof that the immediate children of his brother and sisters were the *personæ predilectæ*.

THE LORDS found, That the legacy in question was confined to the immediate issue of Anne and Barbara Annands, the testator's sisters.

For John Wishart, *Cosmo Gordon*. For Mr George Grant, *James Philp*. Clerk, *Pringle*.

*Fol. Dic. v. 3. p. 124. Fac. Col. No 107. p. 252.*