

SECT. IX.

Alimentary Provision, where the Grantee comes to be otherwise provided. Condition, *Si sine liberis decesserit.*

No 49. 1688. July 13. GRAY of Crichtie *against* MARQUIS of MONROSE.

THE Marquis of Montrose having granted a bond for 800 merks yearly to Lady Jean his sister, expressing to be for her aliment and subsistence, and the said Lady Jean having afterwards, through the moyen of the late Marquis, son to the granter, obtained a yearly pension of L. 100 from the King, she neglected several years to call for the 800 merks; but at her death she legated L. 150 Sterling to the Lady Gray, with whom she had staid, and 2000 merks Scots to the physician that had attended her eleven years, which legatars pursued this young Earl.

Alleged for the defender; That the testator having a sufficient fund of aliment by the L. 100 pension, the impulsive cause of the bond ceased; especially considering, that the pension was procured by the defender's father.

THE LORDS decerned, because though the aliment was the impulsive cause of the bond, it did not cease to be effectual by the supervenient accession of the pension.

Fol. Dic. v. 1. p. 429. Harcarse, (ALIMENT.) No 24. p. 6.

No 50. 1738. November 21. MAGISTRATES of MONTROSE *against* ROBERTSON.

IN a provision to children, whereby the deceasing's part was declared to fall to the surviving children, it was found that the part of one descended to his children; it being the implied or presumed will of the father, that the substitution to the survivors should take place only *si instituti sine liberis decesserint.*

Fol. Dic. v. 1. p. 430. Kilkerran, (PROVISION to HEIRS and CHILDREN.) No 3. p. 455.

* * * C. Home reports the same case :

IN the year 1697, the Magistrates of Montrose borrowed 200 merks from David Robertson, for which they granted their bond, obliging themselves, &c. to repay the said sum to him and his wife, for their life rent use allenary, and to James, David, Alexander, and Isobel Robertsons, their lawful children, equally amongst them in fee; and, in case of the decease of any of them, that the same should be equally divided amongst the surviving bairns. David Ro-