

S E C T. XVIII.

Where the Child will not represent his Father.—Where Children provided by a Contract of Marriage predecease their Father.—Where Provisions are made to Children *nominatim*, and one afterward succeeds as Heir.

No. 148.

1756. *January 20.* Competition CREDITORS OF KINMINITY.

A WIFE having bound herself, in her contract of marriage, to pay a certain sum yearly out of the rents of her jointure-lands, &c. to the heir-male of the marriage, and the heir-male of his body; the husband dying, leaving many debts, the heir-male renounced to represent him, and the creditors *pleaded*, That the provision to the heir should be deducted from the widow's liferent, so as to increase the defunct's *hæreditas jacens* affectable for his debts. THE LORDS found, that the provision to the heir-male did not diminish the widow's jointure.

Fol. Dic. v. 4. p. 186. Fac. Col.

* * This case is No 343. p. 6127. *voce* HUSBAND AND WIFE.

1780. *January 12.*WILLIAM MACONOCHIE *against* JAMES, MARY, and GRIZEL GREENLEE.

No 149.

An assignment by an heir of a marriage, of her interest, how far effectual, she having died before her father.

By marriage-contract between James Beveridge and Janet Smibert, in 1719, the former obliged himself to provide 2000 merks, two tenements in Edinburgh belonging to him, and the conquest during the marriage, 'to himself and the said Janet Smibert in conjunct fee and liferent, and to the heirs procreated, and to be procreated between them, in fee.'

The issue of this marriage, which dissolved in 1730, by the death of Janet Smibert, were two daughters, Jane and Margaret.

Jane, upon her marriage, discharged her father of the provisions due to her. Margaret intermarried with William Maconochie, and assigned to her husband all right accruing to her from the marriage-contract between her parents.

Mrs Maconochie predeceased her father, who died in 1778; and her husband, by virtue of the conveyance already mentioned, pursued her father's Representatives, James, Mary, and Grizel Greenlee, his grandchildren by a second marriage, for the provisions alleged to belong to her.