renounced the benefit of her legitim, which was due unto her after her father's decease, especially there being no other child. And where it was alleged, that she behoved then to confer, it was thought that collation should only be among brethren or sisters, and not betwixt these parties. No 3.

Fol. Dic. v. 1. *p.* 149. *Spottiswood, p.* 133.

1631. *February* 19. CORSAN *against* CORSAN.

No 4.
Collation takes no place where it is prohibited; as, for example, where a father, in his daughter's contract of marriage, besides her tocher, made this provision, "that she should have an equal proportion of his goods at his death with his other children."

THIS cause being mentioned the 9th of February 1631*, and it being further *alleged* by the defender, That the pursuer, by virtue of the clause libelled in the contract†, would have right to no more, but to her part of the dead's part of his goods and gear, and could not acclaim a portion natural thereof, with these two daughters defenders; for albeit by that contract, she might have right to her equal part of all, both for bairns-part, and for the dead's part, with her two sisters named in that contract, now deceased, yet that might lawfully have holden, where both she and these two sisters were all forisfamiliate, before this contract; but it is not alike, for these two defenders who are begotten since, and have received no part of their father's goods, and who want their portion natural, so that of reason they ought to have their portion natural, as the pursuer got, and as the two defunct sisters got; and after that, the pursuer might be partner of the rest; otherwise if she acclaimed to be portioner of all the defunct's goods, she ought to confer with the defenders, that portion she got from her father before. This allegeance was repelled, and the LORDS found, that the pursuer ought to have her equal part of the defunct's goods, with these defenders, without any collation of that which she received before, to which the LORDS found, that she could not be compelled.

Fol. Dic. v. 1. *p.* 149. *Durie, p.* 573.

1663. *February* 18. DUMBAR of Hemprigs *against* LADY FRAZER.

No 5.
An only child being forisfamiliate by marriage, and having got a tocher, but not bearing "in satisfaction of children's part," was found notwithstanding obliged to collate that

MY Lady Frazer, being first married to Sir John Sinclair of Dumbeath, next to the Lord Arbuthnot, and last to the Lord Frazer, Dumbar of Hemprigs, as executor confirmed to Dumbeath, pursues her, and the Lord Frazer her husband, for his interest, for delivery, or payment of the moveables of Dumbeath, intromitted with by her. It was *answered*, That she had right to the half of Dumbeath's moveables, as his relict, and her intromission was within that half. It was *replied*, That she had only right to a third; because Dumbeath had a bairn of the former marriage, who survived him, and so the executry must be imparted. It

* The case alluded to is, M'Millan, &c. against Corsans, Durie, p. 566., *voce* PROVISIONS TO HEIRS AND CHILDREN.

† The terms of the contract are stated on the margin above.

No 5.
tocher with the relict, before she could have access to draw her third share of the defunct's moveables.

was *duplied*, That that bairn was *forisfamiliate*, married, and provided before her father's death, and so was not *in familia ;* and albeit, if there had been any other bairns in the family, that bairn's part would have accresced to them ; yet being no other, it accresced to the man and wife ; and the executry is *bipartite.*

THE LORDS found the defence and duply relevant, albeit it was not alleged, that the tocher was accepted in satisfaction of the bairn's part of gear ; unless those who have right would offer to confer, and bring in the tocher received ; in which case, they might crave a third, if the same were not renounced, or the tocher accepted instead thereof.

It was further *alleged* for the Lord Frazer, That he could not be liable as husband ; because his Lady being formerly married to the Lord Arbuthnot, he got the moveables, and his successors should be liable, at least in the first place.

THE LORDS repelled the allegeance, but prejudice to the Lord Frazer to pursue the successors of the former husband, for repetition as accords.

Fol. Dic. v. 1. *p.* 149. *Stair, v.* 1. *p.* 181.

THE contrary found, 11th December 1719, Lady Balmain *contra* Lady Glenfarquhar, *infra.*

No 6.
There is no collation in our law but in the case of succession in moveables, and therefore not among heirs portioners, whatever separate provisions any of them may have got, by contract of marriage or otherwise.

1673. *December* 20. JACK *against* JACKS.

PATRICK JACK did, by contract of marriage betwixt John Douglas and Margaret Jack his daughter, dispone in name of tocher, a fishing and some tenements, and thereafter having left three other daughters, there was a decreet arbitral amongst them for division of their father's estate, which being under reduction upon lesion, and an auditor appointed to state the interest of the parties, and what the defunct's estate was before the arbitriment ; this question occurred before the auditor, whether the said Margaret Jack, to whom a part of her father's estate was disponed by her contract of marriage, would fall an equal share in the rest of his heritage, as heir portioner with the rest of the daughters, unless she would confer and bring in what she had received before by her contract *per collationem bonorum.*

THE LORDS found that there was no collation to be made by the law of Scotland, but only in the case of moveables, and not amongst heirs portioners.

Fol. Dic. v. 1. *p.* 148. *Stair, v.* 2. *p.* 244.

*** Gosford reports the same case :

IN the reduction of a contract of division betwixt the said sisters, there being count and reckoning ordained, to the effect it might be known how far any of the sisters, as creditors, might charge their father's estate, and