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

No 7.

have satisfaction out of the whole before any division betwixt them, as heirs or portioners to their father. It was *alleged* for the said Margaret, That by her contract of marriage, her father being obliged to dispone to her, and her heirs, the half of his salmon fishing upon the water of Dae, with the sum of 2000 merks to be paid after his decease, she ought to be first satisfied of that debt, and have a right made to her by her two sisters, in so far as she might be secured in the half of the salmon fishing; and, thereafter, have the just third part of the whole remainder of the estate, as one of the three heirs portioners with them. It was *answered*, That the said Margaret being provided and forisfamiliate, ought to have no share of the remainder of their father's estate, unless she were willing to collate and bring in what she was provided to by her contract; as was clear where heirs female, being provided and forisfamilitate, could crave no part of the moveable estate belonging to their father, unless they would collate with their sisters, who remained *in familia;* especially there being no provision in the contract, whereby she was to come in and have an equal share of the remainder of the estate beside the tocher. THE LORDS did find, that the eldest sister, besides the provision in her contract of marriage, ought to have an equal share with her two sisters, who were not forisfamiliate as to all lands and heritages; and that there was not, by our law, any necessity to offer to collate, as in succession to moveables, the elder sister not being secluded, nor her tocher declared to be in full satisfaction of all that she could ask or claim; and that notwithstanding that reason seems alike in both, and that there hath been no practique in the contrary. But it being looked upon as a constitute custom, without all controversy or debate, they did decern as said is.

Gosford, MS. No 656. p. 384.

1677. *February* 14.

DUKE and DUTCHESS of BUCCLEUGH *against* The EARL of TWEEDDALE.

No 8.
A second son insisting for his legitim, was not obliged to collate a provision of land which he got from his father; for collation is introduced to keep equality among the children, only as to the moveables; and since the moveables

THERE was an agreement betwixt the Duke and Dutchess of Buccleugh and the Earl of Tweeddale, by interposition of the King, whereby the Duke and Dutchess 'renounced to the Earl a wadset of his lands for L. 44,000, and certain bygone annualrents, and the Earl gave a bond to them of L. 15,000, and discharged all right his Lady had as executrix to David her brother, who was one of the four children of Buccleugh, beside the heir; the inventory of the testament being L. 188,000; and did likewise dispone the right of Bassenden, unto which he had an ancient claim reserved by interruptions, being worth 3000 merks yearly, and the expence of reducing the Dutchess's eldest sister's contract of marriage with the E. of Tarras, and two London voyages.' This agreement was made in the Duke and Dutchess's minority, and the King took burden to cause them ratify; but the Duke and Dutchess do now pursue reduction of this agreement upon minority and lesion; and condescend, that the