

1685. *January.*

BORTHWICK of Cruickston *against* CRAIG his Mother, and GEORGE HUME her Husband.

No 21.

FOUND, that the goods in a man's testament received a bipartite division to him and the children, in respect his relict had, in her contract of marriage, renounced her third; but in respect she had got thereafter an assignation to the half of her husband's goods, she was found to have an half share.—Perhaps this should be Borthwick of Pilmoir.

*Fol. Dic. v. 1. p. 545. Harcarse, (EXECUTRY.) No 464. p. 126.*

1694. *December 4.* Foubister *against* ———.

No 22.

WHITELAW reported to the Lords a query, in the case of one Foubister, who left only a son and a daughter. She married, and in her contract had accepted of a tocher, and given a renunciation of all she could ask or crave. Now, her brother offering to confirm executor, she interposed, and craved the office, in regard he could not be both heir and executor, and she was willing to collate her tocher with him. *Answered*, She had renounced. *Replied*, She was still one of kin.—THE LORDS found she was to be reputed as out of the field, and that the sole office and benefit accresced to her brother.

*Fol. Dic. v. 1. p. 544. Fountainball, v. 1. p. 647.*

1726. *January 18.*

JANET, JEAN, and WILHELMINA NISBETS *against* NISBET of Dirleton, their Brother.

No 23.

THE deceased William Nisbet of Dirleton, in his contract of marriage with Mrs Jean Bennet, his second lady, provided her 'To a liferent-annuity of twenty-six chalders ten bolls victual, which she accepted in full satisfaction of terce of lands, third of moveables, or others, which she might claim by law, in and through her said husband's decease.' In the same contract, 'he obliges himself, his heirs and successors, to make payment to the daughters of the marriage, if three or more, the sum of 60,000 merks;' and the term of payment is after the said William Nisbet's decease, at their respective ages of eighteen years complete, with annualrent, &c.

After the death of their father, Janet, Jean, and Wilhelmina Nisbets brought an action against the present Dirleton, as executor nominate, to account to them for the half of the defunct's free moveables, as their legitim. Amongst other

The wife accepting a voluntary instead of her legal provision, the moveables receive a bipartite division betwixt the legitim and dead's part, equally as she were removed by death.

Provisions to children, unless so ex-