No 60.
to whom a share of the succession was bequeathed, confirmed executrix. Her separate rights remained entire, as she had protested to that effect.

daughters equally to succeed to all his lands, goods and gear whatsoever, notwithstanding of any prior assignation or right, made of before to any of his bairns; which testament is thereafter confirmed, and the said Alexander Forbes's wife is confirmed one of the father's four executors. Upon this contract Alexander Forbes pursues the other three daughters as executors, for payment of the tocher; and the defenders *alleging*, That the defunct declared in his testament, that all the four daughters should be equal portioners, as said is, likeas this pursuer had homologated the said testament, not only by confirming his wife one of the four executors, but also by uplifting of a part of the defunct's moveable sums, as executor confirmed;—THE LORDS repelled this allegeance, and found that the other three sisters were liable to the fourth sister for the tocher contracted to her as said is, as a debt owing by their common father, which did affect all his free gear, in the same case as it would have been affected to a creditor, who had been a stranger; and repelled the allegeance of homologation of the testament, notwithstanding that this sister was confirmed one of the four executors of their father; because at the time of the said confirmation she protested, that the confirmation foresaid should not prejudge her in her debt; and also that the husband and she renounced all benefit that they could claim by the executry; and for any intromission had by them, with the defunct's goods, they were content to allow the same in part of payment of this sum now acclaimed; which the LORDS sustained to elide this homologation. And thereafter it being *alleged*, That the pursuer, as one of the four daughters and heirs, should be liable for her own part, and the defenders only for the remanent, viz. three parts, this allegeance was repelled, and the three daughters were found liable to the whole debt *in solidum*, without defalcation or collation, the pursuer being always obliged, if any debts arise which may exhaust the whole moveables, to be liable to refund his own part proportionally; and the father being in the said contract obliged to entertain the pursuer and his wife in his house for a year, and dying before the year, it was found that this was a debt which should lie totally upon the other executors, without division, albeit it was *alleged* that he entertained them so long as he lived, and the contract cannot be drawn to any other meaning but that he should so entertain them, if he lived that whole space himself; and modified 400 merks therefor.

Act. *Fletcher & Johnston.* Alt. *Heriot.* Clerk, *Gibson.*

Durie, p. 890.

1662. *July* 1. BREIDY *against* BREIDY and MUIR.

No 61.

A CONTRACT of marriage was sustained, both against principal and cautioner, albeit subscribed but by one notary, and by one subscribing witness, there being more witnesses inserted, in respect that marriage followed thereupon. See WRIT. *Fol. Dic. v.* 1. *p.* 382. *Stair, v.* 1. *p.* 119.