

disposition, he be as well as they, that ground ceaseth; and, therefore, he must communicate both, if he crave a share in the moveable estate; for it is ordinary for fathers, in their sons' contract of marriage, to infest them in their whole heritable estate, whereby there remained no heritable succession, and yet they were never admitted to partake of the moveables, but were excluded as heirs *per perceptionem hereditatis*; and there is no reason that an inconsiderable remnant of an heritage should, by communication thereof, admit heirs to the moveables, when perhaps the far greater part were enjoyed by them, by their father's disposition.

THE LORDS admitted the heir to a share with the other bairns, providing that he communicate all that he had of the heritable estate, by disposition or succession, by being infest as heir, and disposing to the children an equal share with himself of the said heritable estate, with the burden of an equal share of the heritable debt. But the LORDS did not determine, whether the communication should be only to the bairns part, or also to the dead's part, but were clear that he was not to communicate to the relict's part, seeing there were other bairns in the family, and the relict would neither have benefit nor loss by any thing the husband, nor any, could do, as to her share.

*Fol. Dic. v. 1. p. 149. Stair, v. 2. p. 640.*

1680. July 21. JAMES BROWN against HIS MOTHER and TUTORs.

By contract of marriage, the lands being provided to the heir by the first clause, and the conquest to the bairns in a subsequent clause; The LORDS found the heir had a share in the conquest, (though it was most part executry) without collation, because he was also a bairn.

*Fol. Dic. v. 1. p. 148. Fountainhall, MS.*

1681. January 12. TROTTER against ROCHEAD.

In an action of count and reckoning between Catharine Trotter, Lady Craighleith, and Rochead, Lady Prestongrange, younger, her daughter; the auditor reported the points following; *Imprimis*, The Lady Craighleith, by her contract of marriage, is provided to — chalders of victual yearly, out of the lands of Craighleith, to be uplifted yearly between Yule and Candlemas; and her husband having died after Martinmas, but before Candlemas, she claims that year's annuity.—It was *alleged* for the heir her daughter, That she being both heir and executrix, the whole year in which her father died belongs to her, as executrix, according to the known custom between executors and liferenters or heirs, where in the legal terms of Whitsunday and Martinmas are only respected as the rule for division; so that if the defunct die after Whitsunday, his executor hath the

No 10.

No 11.

No 12.

There being only one child, who was both heir and executor, he was found to have the whole children's part, without collating the heritage with the relict.