

S E C T. VI.

Whether Heirs of a Marriage can transmit to their Representatives their *jus crediti* without service?

1682. February. CLERK of Pennycuik *against* His SISTERS.

No 34.

A SUM provided to children in a contract of marriage, must be taken up by the children as heirs of provision, and therefore if any of them die before their father, they will transmit nothing to their representatives.

Fol. Dic. v. 2. p. 279. Harcarse.

*** This case is No 3. p. 6330. *voce* IMPLIED CONDITION.

1697. December 7. CUMING *against* KENNEDY.

No 35.

THERE being an obligation in a contract of marriage to provide the conquest to the children of the marriage, the LORDS found, That a daughter, the only child of the marriage, had right to the conquest *ipso jure*, though she was neither confirmed nor served heir of conquest, and consequently that her husband *jure mariti*, after her death, was entitled to what part of the conquest was moveable.

Fol. Dic. v. 2. p. 279. Fountainhall.

*** This case is No 41. p. 6441. *voce* IMPLIED DISCHARGE.

1716. December 27. EUPHAN M'INTOSH *against* M'INTOSH of Abberarder.

No 36.

LAUHLANE M'INTOSH of Abberarder, father to the said Euphan, by contract of marriage with her mother, his second wife, obliges himself to secure the children of that marriage in 6000 merks. Three of the children survived the father, but two died thereafter under pupillarity, without being served heirs of provision; so that Euphan now being the only child of the marriage, serves herself heir of provision to her father, and intents process against William M'Intosh of Abberarder, her father's heir of the first marriage, for the whole 6000 merks; in which process, among other points, this came to be discussed, viz. whether she, as heir of provision to her father, had right to the whole sum.

A father in his contract of marriage with a second wife, obliged himself to secure the children of that marriage in a certain sum. Three of them survived their father, but of these three...