

his life; and the children must be satisfied with their share as he leaves it. This case, therefore, differs in every circumstance. *3tio*, Were this maxim applicable, there is a stronger presumption on the other side, that would take away its whole force, viz. the presumption of paternal affection, which has the effect, that bonds of provision to children are not even imputed in former bonds; see *Stair, l. 1. t. 8. § 2. med.* far less in the legitim.

No 23.

“ THE LORDS found the provisions of the defunct’s contract of marriage in favour of his children, the pursuers, must come off the hail head of the executry, as a debt; and that what remains after payment of these provisions, and payment of the defunct’s other moveable debts, the children come to have right to the equal half thereof, as their legitim.”

Fol. Dic. v. 1. p. 545. Rem. Dec. v. 1. No 66. p. 127.

* * * The like was determined with respect to the relict’s third, in the case betwixt the Lady Balmain and Lieutenant Graham, December 1720; where the LORDS found, that some donations of money and other moveables, made by the husband to his wife, were not imputable in her legal third. See APPENDIX.

1728. *June.* MARION HENDERSON *against* DAVID HENDERSON.

No 24.

CLAUD HENDERSON had a son and three daughters; the eldest, in her contract of marriage, accepted a provision in satisfaction; the son obtained a general disposition from his father of all his effects, with the burden of certain provisions to the two youngest daughters. After the father’s decease, the second daughter ratified the disposition to her brother, accepted of her provision, and renounced any claim she had of legitim; the youngest neglected her provision, and took herself to her claim of legitim. THE LORDS found, That the eldest daughter being forisfamiliarized before the father’s decease, the brother could claim no share nor interest in the legitim upon her account, and that the second daughter not being forisfamiliarized the time of the father’s decease, had right to a share of the legitim, and did, by her ratification and renunciation, communicate her share to her brother. See APPENDIX.

Fol. Dic. v. 1. p. 544.

1738. *July 2.* CAMPBELL and Her HUSBAND *against* CAMPBELLS.

No 25.

FOUND, that where a child forisfamiliarized had renounced all claim to legitim or dead’s part, the renunciation barred him or her from competing with the other children *in familia*, or their descendants, but did not bar him or her in competition with collaterals.

No 25.

Quere, Would it bar also the descendants of the renouncer? So it is thought, though claiming in their own right, and not representing the renouncer, because of its being effectual against the renouncer, who was *in titulo*. It is otherwise in heritage.

Fol. Dic. v. 3. p. 383. Kilkerran, (LEGITIM.) No 2. p. 333.

1768. July 29.

HENRIETTA SINCLAIR, and BENJAMIN MOODIE of Melsetter, her Husband,
against CHARLES SINCLAIR of Olrick.

No 26.

Effect of a discharge in a contract of marriage upon the wife's right of legitim or claim upon her father's executry.

DONALD SINCLAIR of Olrick had one son, Charles Sinclair, and one daughter, Henrietta, who, in 1755, married Mr Moodie of Melsetter; and, by the contract of marriage, the estate of Melsetter was settled upon the issue of the marriage; and, on the other part, Olrick gave a portion of L. 500 Sterling with his daughter, which sum, by the contract, 'she, with consent of her said future husband, and he, as taking burden upon him for her, accepts of, in full satisfaction to her, of all she can ask or demand as portion-natural, legitim, or upon any other account whatever, excepting good will allenary.'

In 1766, Donald Sinclair died, and his son and heir Charles *contended*, That, by the above recited clause in Mrs Moodie's contract of marriage, she was cut off from every claim upon her father Olrick's executry. It was, on the other hand, insisted for Mrs Moodie and her husband, that said clause did not exclude her from her father's executry, or cut off her legitim; and she obtained herself decerned executrix *qua* nearest in kin to her father, before the Commissary of Caithness, and brought an action against her brother Charles, as intromitter with his father's moveable effects. Charles raised a reduction of the confirmation obtained by Mrs Moodie. The Lord Auchinleck, Ordinary, reported the question to the Court.

And, on advising the cause, 16th June 1768, "THE LORDS found, That the pursuer, Henrietta Sinclair, is not excluded from her father's executry by the discharge in her contract of marriage, but has right thereto by the confirmation produced; assoilzie her and her husband from the process of reduction and declarator brought against them by Charles Sinclair, and decern therein accordingly; and remit to the Lord Ordinary to proceed in the cause."

Charles Sinclair reclaimed against this interlocutor; and, on advising his petition, with answers for Mrs Moodie, 29th July 1768, "THE LORDS adhered to their former interlocutor, finding, That Henrietta Sinclair is not excluded from her father's executry by the discharge in her contract of marriage, but has right thereto by the confirmation produced, and assoilzie her from the process of reduction; and in as far refuse the desire of this petition; but find the petitioner,