

EXECUTRY.

1638. *November 17.* The BAIRNS of FRASER *against* BISHOP.

THE Bairns of one Fraser in Currie, having obtained decret against one Bishop, relict of their father, and intromissatrix with his goods, for payment to them, as executors confirmed to their father, of a certain sum; and the suspender *alleging*, That the executors ought not to have paid the sum of alleged addebted to the bairns of her said husband, gotten in his first marriage, by the which her third, as relict, was prejudged, for that should not be respected as a debt to exhaust her third, as other debts owing to lawful creditors do; for that debt owing to the bairns is of another nature, and should only affect the bairns' part of gear, and the defunct's own part, and the relict's third part should be free thereof. This allegiance was repelled, and the LORDS found, that the provision made in favours of the bairns of the first marriage, was a debt which affected the whole goods, as any other debt does, and that it ought not to be taken off the two parts of the defunct's goods, so that the relict's third should be free thereof, but that it ought to be taken off both the third and two parts *in cumulo*.

Fol. Dic. v. 1. p. 279. Durie, p. 861.

1671. *January 25.* SANDILANDS *against* SANDILANDS.

THE Children of Alexander Sandilands pursue Agnes Sandilands their mother, for count and payment of their father's means, the tutory being now finished by her marriage; in which account the mother gave up in defalcation the third of all moveable sums, as ships, merchant goods, household plenishing, &c.—It

No 1.

Provisions in favour of children of a first marriage are not to be taken off the two thirds of the moveables, to make the second wife's third free thereof, but affect the defunct's whole moveables.

No 2.

A clause of conquest in a contract of marriage, in favour of the children of the mar-