

S E C T. IV.

Forisfiliation.

1561. *February 23.*Sir WILLIAM HAMILTON *against* JOHN WALLACE of Craigie.

No 16.

GIF any man havand ane lauchful wife, and in like manner lauchful bairns gottin of his bodie, the quhilkis bairnis ar all forisfiliat befor his deceis, all his movabill gudis and geir pertenant to him the time of his deceis, sould be dividit equallie in twa partis, viz. the deidis part, and the wife's part; because the bairnis, beand forisfiliat, sould have na part nor portioun thair of.

Fol. Dic. v. I. p. 544. Balfour, (TESTAMENTS.) No 9. p. 218.

No 17.

1687. *December 8.*RUSSELS *against* BROWN.

FORISFILIATION of a daughter by marriage, found not to prejudice her portion-natural, unless discharged by her, although she got a tocher, which only obliged her to collate with the other children.

Fol. Dic. v. I. p. 544. Harcarse. Sir P. Home.

. This case is No 15. p. 8177. *b. t.*

. The like, where the question was betwixt the daughter and the relict, 11th December 1719, Lady Balmain *against* Lady Glenfarquhar, No 14. p. 2378., *voce* COLLATION.

No 18.

1766. *July 19.*SPENCE *against* STEVENSON and Others.

Notwithstanding of a provision in full of legitim, the grantee continuing a bairn in the house, her right to bairns part found entire, as against her father, except in competition with her sisters.

A BOND of provision was granted to a daughter 'in full of all she could claim as legitim, bairns part of gear, or otherwise whatsoever; provided nevertheless, that she shall be a bairn in my house, and have a part of my goods and gear the time of my decease, my other daughters being first as well provided.'

The granter had no other daughters; but, by a testamentary deed, he vested his moveables in trustees for behoof of his daughter and her children, payable at their majority or marriage; which, on their death, before either of these events, were to devolve upon certain persons particularly mentioned.

"THE LORDS found, that the clause in the bond of provision, by which the daughter accepts of it in full of her legitim or bairns part of gear, but under

proviso, that she shall be a bairn in his house, and have a share of his effects at his death, his other daughters being first as well provided, imports no more than that she was to have no farther share, until her sisters had got as much as she; so that her claim for her bairns part of gear or legitim, against her father, except in competition with her sisters, was left entire; and that the after settlement, being a *mortis causa* deed, is not effectual to exclude the legitim."

No 18.

Reporter, *Auchinleck*
G. F.

Act. *Montgomery.*Alt. *Ilay Campbell.**Fac. Col. No 42. p. 269.*

S E C T. V.

Renunciation of the Legitim.

1671. *February 17.*MRS KATHARINE M'GILL *against* The COUNTESS of OXENFORD.

THE deceased Viscount of Oxenford having named his son executor and universal legatar, he gives a bond of provision to umquhile Mrs Mary, one of his daughters, in satisfaction of her portion natural and bairns part; there are yet three children beside the heir, and the said Mrs Mary did survive her father, and in the count and reckoning of his executry, the three surviving children claimed half of the moveables as the bairns part. It was *alleged* for the Viscount, the universal legatar, That a fourth part of the bairns part behoved to belong to him, which would have belonged to Mrs Mary; because the bond granted by the defunct being in satisfaction of Mary's bairns part, her bairns part must come in place of it, and not accresce to the rest of the bairns, but must belong to him as executor and universal legatar; especially this bond being granted on death-bed, is only effectual as a legacy, whereby the defunct did burden his own dead's part, which can be no otherways understood than thus, that he would make up Mary's portion to L. 10,000, her bairns part being in the first end thereof; and it cannot be thought his meaning to exhaust his dead's part further, or to gift any thing to the rest of the bairns by the accrescence of Mary's part. It was *answered*, That such bonds of provision are most ordinary, bearing it to be in satisfaction of their bairns part, which has ever been so interpreted, that the portion of the bairn so satisfied accresceth to the rest of the bairns; and it was never heard, that the heir or executor burdened

No 19.

A bond of provision being granted to a child in satisfaction of legitim, the bairns part goes wholly to the other children, and no part to the heir or executor, who are burdened with payment of the bond.