

1678. *January 29.*

No 4.

LADY PARDOVAN and Her DAUGHTERS *against* STEWART of Pardovan.

IN a contract matrimonial, conquest being provided to the heirs or bairns, and these being a son and four daughters, the daughters raise a declarator that the conquest belongs to them. THE LORDS found the claim of conquest, as it was conceived, did provide the conquest to all the bairns of the marriage, one or more, so that the son might come in with the rest, and that the father intended an equal division among them all.

It was found in the case of Mr Thomas Baird's wife and children of the first marriage, that a provision in favour of bairns makes an equal succession; and in this case the LORDS found it was not conquest what was paid as a composition for the succession, and allowed it to be proved by the comuners and witnesses.

*Fol. Dic. v. 2. p. 275. Fountainhall, MS.*

\*\*\* Stairs report of this case No 5. p. 3052, *voce* CONQUEST.

No 5.

1680. *July 21.*BROWN *against* His MOTHER.

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

*Fol. Dic. v. 2. p. 275.*

\*\*\* This case is No 11. p. 2375, *voce* COLLATION.

1684. *February.*SCOT and ARTHURS *against* CHARLES SCOT of Bonnington.

No 6.

Found, that children representing their father must receive a sum divided *per capita*, and the eldest have one share.

ONE being obliged, in his contract of marriage, to provide L. 20,000 upon land to himself and his wife in liferent, and to the heirs of the marriage in fee, with a quality, That the same should be proportioned among the children at his sight; and that the wife surviving should restrict herself, and pass from that part of the annualrent effecting to the proportion of the child or children, so soon as they came to be married; by the infestment upon the said contract, the fee is provided to the heirs of bairns. The eldest son pretended to be heir of the whole sum, as the heir of provision.