

SECT. III.

Provision that the Child shall be an equal sharer in the Father's means and effects.

No 15.

1683. February.

A. against B.

IT being provided, in a wife's contract of marriage, that she, in case of her decease without children, should have power to dispose of 400 merks, even without her husband's consent; she surviving him without children, claimed the 400 merks. It was *alleged* for the defender, That the foresaid power of disposal was only intended in case the wife had predeceased, seeing these words, "without his consent," import him to be living the time of her disposal; and this was rational, in respect she would have had no jointure off the estate in such a case; but she having outlived him, and got a jointure, there is no reason she should have also the disposal of the 400 merks.

THE LORDS sustained the defender's allegiance, and found the pursuer had only right to the 400 merks, in case she had died before her husband.

Fol. Dic. v. 2. p. 277. Harcarse, (CONTRACTS OF MARRIAGE.) No 355. p. 89.

1715. February 4.

ISABEL BROWN Spouse to ROBERT PYLE, Writer in Kelso, *against* Her HUSBAND.

No 16.

A man, in his daughter's contract of marriage, bound himself that, failing heirs-male, she should be an heir portioner. There being no other children, it was found, the father was entitled so to qualify his daughter's right as to exclude the *jus mariti*.

LANCELOT BROWN, feuar in Kelso, having contracted Isabel his daughter in marriage with Robert Pyle, amongst other things it is provided in the contract, that in case he had no heirs-male of his present, or any other marriage, then Isabel was to be heir portioner, and bairn of the house with the other daughter or daughters. Lancelot having married a second wife, repeats the same, or very like clause in his own contract of marriage; but there being no children of the marriage, makes a tailzie of some lands and houses in favours of Isabel for her liferent use allenary, and to the heirs of her body; which failing, to others therein substituted; in which disposition, the husband Robert Pyle his *jus mariti* is expressly excluded, even as to the wife's liferent, which her father there declares, shall be possess by herself allenary, and the rents applied to her own use. After the father's decease, the wife raised declarator against her Husband, for declaring the foresaid exclusion of his *jus mariti*, and that she had the absolute power of uplifting the rents, &c.