No 14. 1719. *December* 11. LADY BALMAIN *against* LADY GLENFARQUHAR.

FOUND, that an only child forisfamiliate, and having got a tocher, that tocher not being expressed to be in satisfaction of children's part, was not obliged to collate with the relict. *See* No 5. p. 2367. *Fol. Dic. v.* 1. *p.* 149.

*** *See* This case, *voce* FORISFAMILIATION.

No 15.
In drawing a share of the moveables, an heir portioner is not bound to collate with her sisters, an estate disponed to her by her father.

1720. *November* 19. RICCART *against* RICCARTS.

RICCART having tailzied the far greatest part of his estate, in favours of himself and the heirs of his body, which failing, to the eldest heir-female without division; and having only three daughters, the eldest daughter and her husband pursue a declarator against her two sisters, That she had right not only to the tailzied estate, but likewise to a third share of an untailzied heritable estate, as heir portioner with the defenders; as likewise, that she had an equal interest in her father's moveables, as one of his nearest of kin.

THE LORDS made no difficulty as to the pursuer's equal share in the untailzied estate: But as to the executry,

It was *alleged*, That the pursuer being heir of tailzie, had no interest in the moveables, from which the heir is always excluded, unless he collate; and albeit in this case there be an untailzied estate of small value, yet the bulk of the estate being tailzied, the pursuer's interest in the moveables is in point of law the same, as if there had been no untailzied estate; in which case, the succession of moveables would belong to the younger sisters, excluding the eldest as heir of tailzie; otherwise there would be a very notable disproportion betwixt the succession of the pursuer and defenders, whose relations to the defunct are equal: And in this case, the value of the tailzied estate is so great, that she would not collate, nor could she by the quality of the tailzie.

It was *answered*, That the succession to heritage and moveables generally descends in different channels: The law prefers a son or heir-male to females in the same degree of relation, in the succession of heritage, and prefers the younger sons and daughters equally to moveables and executry; which are not presumed to be so valuable as heritage: But when it happens otherwise, that the heir reckons his share of the moveables better, he has access to a share of the executry, on condition that he collate his heritage with the executors. But in this case, where the nearest degree are all females, there is no preference, but the law brings them all in equally, both as to heritage and moveables *ab intestato*; but in so far as the father, by a tailzie, has preferred one of the daughters, she succeeds in that estate by the will of the father, who was pleased to exclude heirs portioners; and as to the rest of his estate, it descends *tanquam ab intestato*, and is devolved equally to all the daughters; and there is no different channel of succession among daughters, either as to heritage or moveables, and consequently no seclusion of an heir, because there is no privilege to elder or younger daughters as to heritage; and the seclusion of the heir from the move-

ables is properly *ab intestato*, where the heir-male is preferred in the heritage to the younger sons or daughters. It is true, if a tailzie were made in favours of the heirs-male, who would have the preference *ab intestato*, the express will of the father would not alter the destination of law as to the moveables, which was left to the legal succession: But suppose a father should tailzie his heritable estate to a second or third son not *alioqui successurus*, such an heir of tailzie, would not be excluded from his share of the moveables, as nearest of kin. No 15.

'THE LORDS found, That the pursuer and defenders being equally entitled to the succession of heritage and moveables *ab intestato*, the tailzie did not exclude the pursuer from her legal claim to the executry.'

Fol. Dic. v. 1. *p.* 149. *Rem. Dec. v.* 1. *No* 20. *p.* 42.

1737. *November* 18. BEG *against* LEPRAICK. No 16.

IT was provided in a Lady's contract of marriage, 'That she should be a 'child of the house at the time of her father's decease.' Collation was thus in effect prohibited; consequently it did not take place. *See* No 4. p. 2367.

Fol. Dic. v. 1. *p.* 149.

*** *See* This case *voce* FORISFAMILIATION.

1742. *December* 2.

CHANCELLOR *against* JEAN CHANCELLOR his Sister, and her Husband. No 17.

THE heir is, upon collating the heritage, entitled to his share of the moveables, not only in the case of children succeeding to their father, but also in the collateral succession; and therefore it was FOUND, that a brother, who was heir to his sister in a sum heritably secured, was, upon collating said heritage, entitled to his equal share of her moveables with his surviving sister.

Fol. Dic. v. 3. *p.* 133. *Kilkerran, No* 1. *p.* 124.

1787. *November* 15.

JOHN HAY BALFOUR, and Others, *against* Miss HENRIETTA SCOTT. No 18.

Heirs, whether *alioqui successuri*, or not, and whether *ab intestato*, or *provisione hominis*, must collate, in order to claim any share of the moveable succession.

MR SCOTT of Scotstarvet executed a settlement, by which he disponed his estate 'to himself in liferent, and to David, his eldest son, *&c.* in fee; whom 'failing, to his second son, John, *&c.*; whom failing, to his own other heirs and 'assignees whomsoever; 'the eldest heir-female excluding heirs-portioners, and "succeeding without division,' through the whole course of succession in all 'time coming.' And a proviso was subjoined, that the several male-heirs, and the husbands of the female heirs, were to bear the name and arms of the disponer's family.

An heir is not bound to collate heritage in Scotland,

A charter, with infeftment, having followed on this disposition, David Scott possessed the estate till his death under that title. His property then, besides this landed estate, consisted of government-securities to a large amount, of some