daughters were forisfamiliated at their marriages, he must have taken it for granted that the defender would enjoy every thing he should leave behind him at the time of his death. No 10.

And far less can the defender be bound to any such collation, on account of the annuity which was settled on his wife; for, how much soever a child may be obliged to account for provisions made directly to himself, it is impossible he can be made to account for provisions made to third parties, however nearly they may be connected with him, or however dependent they may be upon him. The defender's father was at liberty to dispose of his effects by deeds, *inter vivos*, as he should think proper. He might have granted bonds to the defender's children, to the full extent of what he was worth; nor could such bonds have been quarrelled by the pursuer, in order to let him into a legitim. And it was surely equally competent to Mr Skinner to do an act of kindness to the defender's wife, by settling a small annuity upon her during her husband's absence, or her widowhood. There are therefore here no *termini habiles* for collation.

Observed on the Bench; L. 100, in this instance, was a large sum, and which could not be considered as of the same nature with advances made by a father on account of his son's education, which are exempted from collation.

THE COURT found, "That the defender must collate the principal sum of L. 100 in question, but not the interests; and, as to the annuity, remitted to the Lord Ordinary to hear parties farther on that point."

Act. *J. Scott.* Alt. *Wight.* Clerk, *Pringle.*

Fol. Dic. v. 3. *p.* 383. *Fac. Col. No* 210. *p.* 158.

SECT. III.

Children have right to Legitim *proprio jure.*

1607. *February* 24. STEVENSON *against* FISHER. No 11.

STEVENSON pursued Fisher to divide to her the half of her defunct husband's goods. He *alleged*, That the pursuer had only interest to acclaim the third of the defunct's goods, because he is one of the defunct's debtors, who had bairns on life, and so his testament behoved to receive a tripartite division, whereof the wife could only fall a third. It was *answered*, That she behoved to have an

No 11. half unless the defender would allege, that that either the testament was formed with a three-fold division, or that the bairns were yet on life; notwithstanding whereof, the LORDS found the exception relevant.

Fol. Dic. v. 1. *p.* 544. *Haddington, MS. No* 1328.

1623. *July* 19. SIBBALD *against* The PROCURATOR-FISCAL of St Andrews.

No 12.

IN an action of suspension, Sibbald *contra* the Procurator-Fiscal of the Commissariot of St Andrews, the LORDS found, that where a man dies, leaving behind his wife with child, who bears a bairn, albeit the bairn should live but one day, that the father's testament-dative being desired to be given up and confirmed upon charges of the Procurator-Fiscal, as use is, and, where there is no testament testamentary, although the said testament-dative should not be confirmed many years after the death of that bairn, who once lived, it should thole and have a threefold division, and that the deceased bairn should not be prejudged in his own third part, nor of no other part of the defunct's third, which might fall to him by the law.

Act. *Aiton.* Alt. Absent. Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 544. *Durie, p.* 75.

No 13. 1681. *November.* JANET GOODALE *against* WILLIAM LIVINGSTON.

FOUND, that a child unforisfamiliate might, without the title of executor, pursue reduction of a testament or deed on death-bed, whereby the pursuer was prejudged of her legitim; because the pursuer was *hæres mobilium* as to the legitim, which passes to heirs, executors or assignees, without confirmation.

Fol. Dic. v. 1. *p.* 544. *Harcarse,* (LECTUS ÆGRITUDINIS.) *No* 647. *p.* 178.

No 14. 1686. *March* 12. YEAMAN *against* YEAMAN.

CHILDREN surviving their father, transmit their legitim to their nearest of kin, though they die without confirmation.

Fol. Dic. v. 1. *p.* 544. *Fount. Harc. Sir P. Home.*

*** This case is No 54. p. 5484., *voce* HERITABLE AND MOVEABLE.