

No 162.

becomes an absolute right no sooner than the father's death; nor is it a succession in a proper sense, because the child does transmit it without confirmation.

"THE LORDS found, that the tocher given to Jean Marjoribanks by Edward Marjoribanks her father, albeit more than the sums specially provided to her by her mother's contract of marriage, does not import her acceptance thereof in full satisfaction of the clause of conquest so provided by the said contract."

The same was found with respect to the legitim, betwixt the Ladies Balmain and Glenfarquhar, No 2. p. 4778. *voce* FORISFAMILIATION, where the Lords found, 11th December 1719, though the daughter was forisfiliate by marriage, and had got a considerable tocher, not mentioned indeed in satisfaction, "that she had right to a full third of the defunct's moveables, without any deduction or regard to the portion formerly received by her from her father." Here it was mainly pleaded for the relict, that the legitim is a right of property in the communion of moveables, which the children must lose by forisfiliation, since thereby they abstract themselves from the society or partnership.

*Fol. Dic. v. 2. p. 146. Rem. Dec. v. 1. No 82. & 83. p. 162.*

## S E C T. VII.

Where the cause of granting is expressed, that must be the rule.

1622. July 18.

KENNEDY *against* JACK.

No 163.

VIDE Ephem. practica in divisione testamenti, dated the 14th July 1622, where it is found, that the executor and only bairn has right to the two parts, and the wife only to a third, albeit the executor be heir also. *Item*, there *alleged* also in that action, at Kennedy's executor his instance against the relict his own mother, for her absolvitor frae the equal half of the two part, quhilk half is the defunct's third; because the defunct her husband left in legacy to her be the testament the equal half of all his hail free goods and gear, whilk is the defunct's hail third. Finds the allegiance relevant *pro tanto*.

*Fol. Dic. v. 2. p. 147. Nicolson, MS. No 604. p. 413.*

\* \* A similar decision was pronounced, 12th January 1681, Morison against Trotter, or Trotter against Rothead, No 12. p. 2375. *voce* COLLATION.