

* * * Harcarse reports this case :

FOUND that a legitim transmits without confirmation, (which is *aditio hereditatis* in moveables) as the consequence of *jus suitatis* ; but that the interest of nearest of kin requires to be transmitted by confirmation.

Harcarse, (EXECUTRY.) No 470. p. 128.

No 14.

1687. December 8. RUSSEL against JOHN BROWN of Scotstoun.

FOUND that a right of legitim transmits without confirmation. *2do*, That forisfiliation of a daughter by marriage, doth not prejudice her portion-natural, unless discharged by her, albeit she got a tocher, which only obliged her to collate.

Fol. Dic. v. I. p. 544. Harcarse, (EXECUTRY.) No 475. p. 129.

No 15.
Found in
conformity
with the
above.

* * * Sir P. Home reports this case :

1687. November.—MR WILLIAM RUSSEL and his children having pursued George Brown of Scotstoun, the children's uncle by the mother, as executor to his father, for payment of a proportional part of his moveables as their mother's legitim, *alleged* for the defender, That he being executor confirmed, as nearest of kin to the defunct, and the pursuer's mother not being confirmed in her own lifetime, the defender, as being the nearest of kin, did exclude the pursuers, the oyes, seeing there is no representation *in mobilibus* ; as also, that the pursuer's mother was married before the defunct her father's decease, and had gotten a portion, and so had no right to any legitim. *Answered*, That the right of legitim is transmitted without a confirmation ; and, children's receiving of portions from the father, does not prejudice them of their legitim, unless it be expressly renounced and discharged. THE LORDS repelled the defence, and found that the legitim must transmit, albeit the mother died before the confirmation of the father's testament ; and found, that notwithstanding the daughter was married, she has right to the legitim, except she had renounced the same when she received her portion ; and decerned for the proportion of the whole goods contained in the inventory.

Sir Pat. Home, MS. v. 3.