

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

FOUND, that an only child forisfiliate, 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.

1720. November 19. RICCART *against* RICCARTS.

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

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-