

his life; and the children must be satisfied with their share as he leaves it. This case, therefore, differs in every circumstance. *3tio*, Were this maxim applicable, there is a stronger presumption on the other side, that would take away its whole force, viz. the presumption of paternal affection, which has the effect, that bonds of provision to children are not even imputed in former bonds; see *Stair, l. 1. t. 8. § 2. med.* far less in the legitim.

No 23.

“THE LORDS found the provisions of the defunct’s contract of marriage in favour of his children, the pursuers, must come off the hail head of the executry, as a debt; and that what remains after payment of these provisions, and payment of the defunct’s other moveable debts, the children come to have right to the equal half thereof, as their legitim.”

Fol. Dic. v. 1. p. 545. Rem. Dec. v. 1. No 66. p. 127.

* * * The like was determined with respect to the relict’s third, in the case betwixt the Lady Balmain and Lieutenant Graham, December 1720; where the LORDS found, that some donations of money and other moveables, made by the husband to his wife, were not imputable in her legal third. See APPENDIX.

1728. *June.* MARION HENDERSON *against* DAVID HENDERSON.

No 24.

CLAUD HENDERSON had a son and three daughters; the eldest, in her contract of marriage, accepted a provision in satisfaction; the son obtained a general disposition from his father of all his effects, with the burden of certain provisions to the two youngest daughters. After the father’s decease, the second daughter ratified the disposition to her brother, accepted of her provision, and renounced any claim she had of legitim; the youngest neglected her provision, and took herself to her claim of legitim. THE LORDS found, That the eldest daughter being forisfamiliarized before the father’s decease, the brother could claim no share nor interest in the legitim upon her account, and that the second daughter not being forisfamiliarized the time of the father’s decease, had right to a share of the legitim, and did, by her ratification and renunciation, communicate her share to her brother. See APPENDIX.

Fol. Dic. v. 1. p. 544.

1738. *July 2.* CAMPBELL and Her HUSBAND *against* CAMPBELLS.

No 25.

FOUND, that where a child forisfamiliarized had renounced all claim to legitim or dead’s part, the renunciation barred him or her from competing with the other children *in familia*, or their descendants, but did not bar him or her in competition with collaterals.