

No 5. right to their father's gear; and albeit this was considered by the LORDS, yet it could not be effectual to give the bairns any right thereto, so long as the father lived; and albeit also the chargers alleged, that seeing the father is living, the bairns could not have right, and that the husband is truly reputed in law to be *dominus omnium bonorum*, as the party alleged, therefore, with the mere reason, and in law, should his wife have the half of all which he had the time of his decease; which allegiance was repelled, and the wife's part restricted to a third, as said is.

Act. *Ja. Gibson.*

Alt. ———.

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 543. Durie, p. 728.*

No 6.

1737. November 10. JUSTICE against HIS FATHER'S DISPONEES.

A man who had only one son who succeeded to him in his land estate, and no other children, made a disposition of his moveables *mortis causa* to certain trustees for the behoof of his grand-children, which, after his death, being quarrelled by his son, as in prejudice of his legitim, the LORDS "found the pursuer entitled to a legitim, and reduced the disposition in so far as it was prejudicial thereto."

The heir is no less entitled to a legitim than the other children, though, if he insist on it, he must collate; and if he was not *de jure* entitled to it, he could no more claim a share of the moveables upon collating, than the younger children can claim the heritage upon collating. It is also *triti juris*, that though there be but one child who is heir, and a relict, the testament is tripartite as well as where there are more children; but if the heir were not *de jure* entitled to a legitim, it should be only bipartite. But why then should not he have been obliged to collate the heritage with the disponees? For this reason, that the right to demand collation is a privilege personal and peculiar to the executor at law, and to no other.

*Fol. Dic. v. 1. p. 543. Kilkerran, No 1. p. 332.*

No 7.

1747. February 25. MARSHALL against FINLAYS.

Questioned, where a man left two children, one his heir, what should be the division of the moveables. *Urged*, That legitim is the portion allotted by law to younger children otherwise unprovided, to which the heir can have no claim. *Answered*, the heirs being provided, is no bar to his claim of legitim, for the younger children, as well as he, have their legal succession, viz. the deads part in the moveables; and the legitim is a separate portion, which the