LEGITIM.

1732. *July* —. STIRLING of Glorat *against* LUKE.

No. 1.

LEGITIM not due where the whole present stock and conquest is settled by contract of marriage, found by the Lords, but reversed upon appeal and legitim found due, there being no clause in satisfaction of the legitim in the contract. *Vide* Case betwixt David Smith and Jean Burden, *voce* MUTUAL CONTRACT. Yet it had been decided in the same way in the Case of Stirling of Glorat, but there was there a clause in satisfaction of the legitim.

1737. *November* 10.
MR JAMES JUSTICE *against* MURRAY and LIVINGSTON.

No. 2.

AN only child, who is therefore both heir and nearest of kin, has right to a legitim not only in competition with the relict, but likewise such whereof the father cannot prejudge him by any deed of a testamentary nature. (See DICT. No. 6. p. 8166.)

1737. *November* 18. JEAN BEGG *against* JEAN LAPRAICK.

No. 3.

A father, who had thirteen children, in the contract of marriage of one of his daughters Jean, gave her 300 merks of tocher " in full of all portion " natural and bairns part of gear, except it is hereby provided that the said " Jean Begg is to be a bairn in the house at the decease of her said father: " It is hereby provided and agreed upon that the said William Begg has " liberty, freedom, and power to dispose and give at his pleasure a portion " to all his sons as he thinks fit and reasonable, without any molestation " or pretence of right his foresaid daughter and her future husband can " lay claim to or crave at his hand, his foresaid daughter being only to be

No. 3. " a bairn of the house at his decease with the rest of his daughters, but " not in the least with his sons." The father dying intestate, the Lords found that the above clause, " in satisfaction of portion natural and bairns " part," without mentioning executry or moveables in general or deads part in particular, does not exclude her from a share of the deads part as one of his nearest of kin, he having died intestate; and therefore found that she has right to an equal share of the deads part with her brothers and sisters, and that the same must be divided among them *secundum capita;* and further found that the *proviso* " that the said Jean was only to be a bairn " in the house with the rest of his daughters, but not in the least with his " sons," does subsist and is effectual in favour of the sons, notwithstanding of the father's having died intestate, and of his having made no deed of provision in favour of his sons; and therefore found that the sons have right to the same share of the legitim or bairns part as if Jean had not existed at the time of her father's death; and in respect that Jean is only provided to be a bairn in the house with the rest of the daughters, and that the father could not, and hath not by any clause in the contract prejudged the daughters as to their legal share in the legitim, found that each of the daughters, excepting Jean, must have an equal share in the whole legitim according to the division of law among the whole children including Jean; and therefore found, that after deducting the shares of the sons as if Jean had not existed at the time of her father's death, and after allowing to each of the other daughters such shares as would belong to her according to the division of law taking in Jean as a bairn of the house, that the remainder of the bairns part or legitim only belongs to Jean and no more; and found that Jean is not obliged to collate her tocher, but hath right to the same as a *præcipuum.*

1738. *July* 21.

MARGARET, *&c.* CAMPBELL, Daughters of CAMPBELL of Skirvine, *against* LADY INVERLIVER.

No. 4.

A DAUGHTER and her husband having accepted of a tocher in satisfaction of bairns part of gear, executry, legacy, or others whatsoever, cannot compete with the children of a son who was *in familia* at the time of the renunciation, for her father's, their grandfather's, executry or the office, and the renunciation operates to exclude the granters and their heirs in favour not only of the children then *in familia* themselves, but likewise of all their issue. (See DICT. No. 25. p. 8187.)