

children ; after his decease, the younger children pursued the eldest, to denude of their proportional part of the land conquest. Alleged for the defender, That, notwithstanding of the clause in the contract of marriage, providing the conquest to the bairns equally, the father, by his paternal power, might rationally proportion the same, with some inequality, according to their circumstances and deserving, that children may, by such a check, be kept *sub paterno obsequio*. Answered, The contract being betwixt small burgesses, whose succession is ordinarily made to run *in capita*, the provision therein must hinder the father to make an equal division ; and, *in anno* 1678, between Stuart and Stuart, it was found, that a father's provision to the bairns of the marriage, without the word *equally*, did hinder him to make the younger children's provision less than that of the eldest ; *multo magis*, in this case, was the father bound to an equal division. The Lords recommended to the parties to agree.

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1686. *January*. THE RELICT OF PATRICK CUNNINGHAM *against* The LAIRD of EVELICK.

A HUSBAND was found liable to pay 200 merks, contained in a ticket granted by his wife, *stante matrimonio* ; whereby she obliged herself, and her heirs, &c. to pay the same ; to which ticket the husband did not consent, but only signed *witness*: because his signing witness was an approbation of the act, and a kind of *præpositura ad hoc negotium*.

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1686. *January*. ROBERT and JOHN GILLISES *against* JANET STUART.

A HUSBAND having, several years after his marriage, provided his wife (with whom he had made no contract,) to the liferent of a tenement of land, without any clause in satisfaction of terce and third ; and, thereafter, having provided her to 3000 merks of his personal estate, and to a liferent of the rest, in satisfaction of the terce and third, and there happening to be no children of the marriage, the relict claimed the half of the personal estate. Alleged for the defender, That she could not have both a liferent of the tenement and the half of the personal estate ; because, 1. The infestment being before the late Act of Parliament, it imported an acceptation, in satisfaction of terce and third, without necessity of any express clause to that purpose ; 2. The last settlement of the personal estate was a tacit revocation of the preceding infestment of liferent given *stante matrimonio*. Answered, By our law and practise, settlement of jointure upon wives, without a clause *in acceptation*, &c. doth not cut off the right of terce,—as was found in the cases of the Lady Eleistoun and of the Lady Craighouse ; 2. Provisions made, *stante matrimonio*, in favours of wives, with whom no contract was made before the marriage, are not revokable as donations *inter virum et uxorem*. The Lords sustained the reply, and found, That the wife had right to both the liferent of the tenement and to the half of the personal estate.

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