

the Succession, or to get Relief of debts of the Deceased, ought to be  
 precisely or line made to bring into the Mass of the Substantance of his  
 father or other Ascendant to Whom they succeed, the things which  
 have been given them by the said Ascendant, that they may be Divided be-  
 tween them and their Heirs in the same manner, as the other  
 goods of the Succession, or if they retain what they ought to bring  
 into the Substantance they should take so much less out of it. *Novo*  
*Cap. 6. pro. Which Reciprocal Joining or Contribution of par-*  
*sons provisions or other things formerly Received out of the estate*  
*of the Deceased, is termed Collation of Goods, and in England goes*  
*the Name of Rottepol. This Collation of goods (Which had its ori-*  
*gin in the Roman Law Nov. 16 Cap. 6. Auth. ex testamento & dicitur*  
*is founded on the Natural Equality among Children in the Succession*  
*of their Ascendants; and upon the Presumption that such gifts*  
*were made only by way of Advance to the Portion of a part of*  
*which they might Expect out of the Succession. Besides, it is*  
*that the burden of the debts of the Deceased should be proportion-*  
*ed upon each heir portioner, according to the Benefit they receive*  
*by Succession to him Mediatly, or Immediately. By the Law of this*  
*Land, one of several Daughters to whom the father Disposed in his*  
*last Contract of Marriage a part of his heritable estate,*  
*was found to have right to an equal share of the Debt of the*  
*Deceased as her portioner with her Sisters, without Communica-*  
*ting and bringing in to them what she had Received before a*  
*Bar Contracts for Collation takes place here only in Moveable*  
*20 Decemb. 1673 Jack contra Jacks. Vid. infra praeviousd. Item he*  
*owing Died without issue except as her to his father in lands*  
*and not in the titles thereof to which the father had a Separ-*  
*rights, and his Sister German having entred her to her brother*  
*in the lands; she and a Sister by the fathers side who entred*  
*heirs portioners to the father in the titles that were not*  
*established in the Brothers person, were liable to relieve or*  
*another of the fathers debts, not equally, but according to the*  
*proportions of his estate they succeeded to Mediatly and Immed-*  
*ately; that in the one referring to the half of the titles, and the other*  
*according to the land and other half of the titles. 10 June 1673. The*  
*contra of which it was alledged, that heirs portions are*  
*not obliged to collate any more than what they had Imme-*  
*diately from the Deceased whose heirs portioners they are. It*  
*often happens, that by a fathers Making provision in favor*  
*of his heirs portioners of Different Marriages, they become M-*  
*ritual Debtors and Creditors to one another. In which case, if*  
*such provisions exceed the estate, the question is whether they*  
*are extinguished Confusions, or if they do all stand in Equity*  
*to this, one having provided his lands to the heirs of three*  
*several Marriages of each whereof there survived a Daugh-*

of which is to be paid to the heirs of the deceased as the respective thirds of the estate

the Lord admitted all the three sisters as heirs portioners and so  
 Confounded the provisions, not for the Heirs or assigned by *Bray*  
*Trust. lib. 2. fol. 19. § 10. viz. the fathers power to Dispose to*  
*his three sons of a second or third Marriage, what he before had pro-*  
*vided to those of a former, which words have preferred the Daugh-*  
*ter of the last, but because all the provisions were equal and*  
*about the same thing, and so being either equally obliged to their*  
*as Representing the Deceased, the Disposition became void and in-*  
*effectual pro tanto. *lib. 3. fol. 8. § 15. vers. there is a case occur-**  
*reth. But since the Act of Parliament 1621 (Cap. 18. par. 2. §. 6.)*  
*The Creditor by the first Disposition or provision may Recover*  
*a posterior Disposition of the same thing to another of the heirs*  
*portioners, as without a cause one would. Yet that will not hold*  
*in Bonds for sums of Money; in which case when three bonds are*  
*granted for equal sums to so many heirs portioners, and these*  
*bonds are Extinct Confusions. Debt and Credit line inde during*  
*the same, but if three bonds of provision for unequal sums*  
*are granted to so many heirs portioners, which fourth, exceed the*  
*value of the Substantance of the Deceased: The provision of each*  
*heir portioner becomes Extinct as to her proportion viz. a third*  
*part, but she had Action as a Creditor for the thirds against the*  
*other two heirs portioners. *P. S. The having an estate of 18000**  
*Marks provided 15000 to his eldest daughter, 12000 to the second,*  
*and 6000 to the third. The eldest inherited 6000 Marks of the re-*  
*mainder of the Deceased as her legal part thereof, and had also the*  
*second and third each of them bound to her for 5000 Marks as*  
*their respective thirds of her provision, which being compen-*  
*sated she gets Declaro 10000 Marks from the second, and 3000*  
*Marks from the third, whereby she draws out of the estate 10000*  
*Marks. The second daughter succeeded to 6000 Marks as her legal*  
*third share of the estate, and had also the eldest and Youngest (each*  
*of them bound to her for 4000 Marks as their respective thirds*  
*of her provision; but she her self is liable to the eldest for 5000*  
*Marks, and to the Youngest for 2000 Marks as the respective*  
*thirds of their provisions, which being compensated, she gives to*  
*the eldest 10000 Marks, and gets from the Youngest 2000 Marks*  
*Declaro: whereby she draws out of the Estate 7000 Marks.*  
*The Youngest Daughter succeeded to 6000 Marks as her legal*  
*third part of the remainder of the Deceased, and had also the*  
*eldest and second each of them bound to her for 2000 Marks*  
*as their respective thirds of her provision: but she her self is*  
*liable to the eldest for 5000 Marks, and to the second for*  
*2000 Marks as the respective thirds of their provisions*