Expences which their Education may have Required; such Ex=
=pences being what parents are bound to lay out upon their
Children, and as it were a debt which they ought to acquit l. 50
ff. Fam. Ercisc. und. By the law of Scotland Collation takes place
only in Moveables, and heirs portioners are not obliged to
make any Collation of their lands, but have besides these equal
share of the Remaining heretable Estate 20 Decemb. 1673 Jack
contra Jacks. The Legitim or portion Natural is excluded by
forisfamiliation. This is the putting a Child forth of his family
and power, whereby he is in a Capacity to do and acquire for him
self, and has no farther Claim upon his fathers estate and
Goods. Which answers to Emancipation in the Civil law, called
upon that Account, the Benefit of being able to acquire goods
l. 1 pr. ff. si a par. quis Manum. Sit. Quaeritur in what manner
are Children forisfamiliated by the law of Scotland? In Answer
to this, our Lawyers are agreed, that forisfamiliation which excludes
Children from a portion Natural happens only two ways Viz. 1°/
By an express Renunciation or Discharge of the Legitim. 2°/ By
Accepting of a provision in full satisfaction thereof. In either
of which Cases, the Child Renouncing or Accepting of a provision
so qualified, cannot share with the other Unprovided Children
in the family. For altho this provision may prove to be less
than the portion Natural which would Accrue to him of her
by law out of the goods of the father who hath Endowed them. Yet
the Uncertainty of the events which may Diminish the said
goods, is one of the Motives which Justify the Renunciation of a
future and uncertain profit, for a Certain and present
portion. Therefore if Children get provisions from the father,
whether heretable or Moveable, not Expresly in satisfaction
of their Legitim, they are not thereby excluded from Claiming
it, unless they have other ways Discharged the same: because
the Legitim being so strongly founded in the Natural and positi=
=ive laws, cannot be taken off by presumption or Conjecture.
But whether these Children be obliged to Collate such provisions
with the Unprovided Children, and to Impute them in part of
their portions natural, or can draw both separately, our
Lawyers are of Different Sentiments. On the one hand it may
be urged 1°/ That by the Roman law whence our Legitim
seems to be Derived, provisions to Children Must be Imputed in
satisfaction thereof pro tanto l. 29. l. 30. C. de Inoffic. Testam. The
Legitim being Introduced as a subsidiary Claim to Children
Unprovided or Not Competently provided by their fathers,
which ought to cease in so far as the design of the law is
fulfilled. 2°/ A father being Debtor for a Legitim to his Children
what

what he gives them must be understood in satisfaction of that
debt: because debitor non presumitur Donare. E Contra it may be
said 1°/ the portion Natural of Children is Not a subsidiary Claim,
but a Direct Interest they have in the Communion of Moveables
by law and Custom abstracted from the Consideration whether
they are other ways provided or Not. With Respect to which they are
absolutely secure, and left to their parents Discretionary bounty
as to any farther Additions. These two Claims are very Consistent
and No More Imputed to Extinguish one Another, than if they sub=
=sisted in Different persons, unless the parent hath expresly so
Determined. 2°/ A father is Not debtor to his Children for their
Legitim, which is a right of Division passing to them without
Confirmation, and May be assigned by them the very Moment
after the fathers breath is out. And tho the Legitim were a debt,
it is not such a one as the Maxim debitor Non praesumitur &c.
can be applied to; the father being upon that account Under
No obligation that the Children can Inforce by legal Execution,
but having the full and free Disposal of his Moveables in liege
poustie, without any Controll by them, who Must be satis=
=fied with their share as he leaves it. Sir George McKinzie
(Inst. lib. 3 Tit. 9 § 11) holds, that provisions granted to Children
in liege poustie belong to them as Mere Creditors, and are
not to be Collated. Thus Childrens provisions by bonds not
bearing in satisfaction of their portion Natural, were found
as debts to be taken off the whole Executry before Division,
and the Children were allowed their legitim of what Remained
free without Discounting these bonds in part of their legitim
16 July 1678 Murray contra Murray. Again, where a Relict had
Discharged her third of the Moveables, provisions to the Children
in their Mothers Contract of Marriage, were taken off the whole
head of the Executry as a debt, and the Equall half of the Re=
=mainder of the Executry after payment of these provisions
and of other Moveable debts, was found to belong to the Children
as their portion Natural 18 January 1726 Nisbets contra
Nisbet of Dirletoun. And a Daughter who was Married and
Got a Considerable Tocher Not Mentioned to be in satisfaction
of their legitim was found to have Right to a full legitim
of her fathers Moveables without any Deduction or Regard
to the portion formerly Received from her father 11 Decemb.
1719 Lady Balmain contra Lady Glenfarquhar. But the
said Sir George is of Opinion that provisions granted to Chil=
=dren