Children by their father on death bed must be Collated: be=cause the father cannot on death bed Incroach upon the legal provisions of his Relict and other Children; And the Parliament

would not allow so much as three Years Rent to be Disposed of on death bed for the provision of Younger Children. The Viscount of Stair (lib 3 Tit. 8 § 46.) And Sir James Stuart (Answers to Dirlet. Doubts Tit. Foris familiation) distinguish betwixt provisions to Younger Children in lands, and provisions in Money tho heretably secured: holding that the former is Not to be Collated 14 feb. 1677 Duke and Dutchess of Buccleugh contra E. Tweeddale But that the latter falls under Collation. Arg. 18 feb. 1663 Dunbar of Hempriggs contra Lady Frazer. Which is Calculated to keep an equallity among Children of the same degree in provisions and Tochers, as to which they are equally Intitled to their parents care and affection. And there seems to be More Reason for Collating Moveable bonds, than any heretable subject: because an heretable provision given to a Child doth not, as that which is Moveable, lessen the Executry which is the subject of the other Childrens provisions; but is taken off the heir, and therefore should be understood to be given as a præcipuum. If some of the Children be foris familiate, and others Not, or provided to be bairns in the house; the latter will get the whole legitim, and fall to the parts of the former Jure Accrescendi. 27 January 1680 Sandilands contra Sandilands. Because a Legitime belongs to the children whither few or many. Thus one of several Daughters having gotten a bond of provision from the father in satisfaction of her portion Natural, her share of the Legitim was found to Accrue to the other children and not to belong to the fathers Executor who was burdened with payment of the bond 17 feb. 1671 Mc Gill contra V. Oxinford. Quæritur If a Child will get a portion Natural (which is to be a bairn in the house) unless the same be expresly Discharged what is then the effect of the ordinary Clause in Contracts of Marriage, that the Child Contracted shall notwithstanding the provision Received be a bairn in the house? The Lord Stair (ibid. § 48 Vers. Yet the Contrary opinion) Answers 1° that the said Clause may be adjected in Majorem Evidentiam & Securitatem: seeing Super abundans Cautela non Nocet. 2° Such a Clause or provisio hominis may Import, that the Child in whose favour it is Conceived should Come in and share of the portion Natural with the Rest, without Consideration of the Tocher or former provisions Whereas had Not that Clause been adjected, there could be No Access to Claim a portion Natural without Collation. And this seems the More probable, that often Children are provided

provided to be bairns in the house, after the rest are all set off with portions: President Spotswood (Prat. Tit. Testaments) says, that where one hath a wife and Children, and the Children are all foris familiate, these Children will have No portion in his Moveable goods and gear, but the same will be Divided in two parts only Viz. the dead's part and the wife's part. And the Lord Stair (ibid. § 46) thinks it Reasonable that where all the Children are provided without having Discharged their bairns part, or Accepted their provisions in satisfaction thereof, they should be excluded from a portion Natural in a Competition with the Relict and Legataries. Because the wife whose interest ariseth from a Dissolution of the Communion of goods with her husband, should not divide with those who are out of the family and already provided, unless their Interest were saved by a Clause allowing them still to be bairns in the house but yet an only Child being Married, and getting a provision not expressed to be in satisfaction of the Legitim, was admitted to a third with the Relict, upon an offer to Collate 18 feb. 1663 Dumbar of Hempriggs contra Lady Frazer. Apud Nos foris familiationis Nomen in hæreditatibus ignotum est Spotswood Prat. Tit. Foris familiation.

The Executors Interest in the testament is set forth elsewhere vide infra Tit. 4.

The Deads part may be Disposed off Gratuitously either by assignation or Discharge, or (as is ordinarly done in testaments) by way of Legacy or Donatio Mortis Causa. And the same persons who may or May not Make testaments or Codicils, may also or may Not make Donations because of Death. The same Capacity is Required for this sort of Dispositions as for the two others. For Donations in Prospect of Death are of the same Nature with Legacies § 1 Inst. de Donat. Which can only affect the deads part 25 July 1662 Nasmeth contra Jaffrey.

A Legacy is a Bequest or Gift, which the testator orders to be Given or made good or paid after his deceass, to the person gratifyed therewith, called Legatary or Legatee: A Legacy may be effectually left, not only in the positive terms of I give and bequeath to such a person, or if it is in the Name of a third person, gives and Bequeaths; but also Verba Optativa are sufficient in legacies, as I wish &c. 25 July 1662 Nasmeth contra Jaffrey favore ultimæ Voluntatis. A Legacy is either Universal or Particular. An Universal Legacy is a gift of the whole deads part, either in favour of the Executor, or some other person. A particular Legacy, is a gift of some part thereof.

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