No 8. should be liable therefore, and relieve the executor thereof, *quia quem sequuntur commoda, eundem etiam incommoda.* Next *ab identitate rationis,* the executor is obliged to relieve the heir of all moveable bonds; therefore the heir is obliged to him in the like for heritable. *3tio, Hæredes succedunt in universum jus defuncti, tam hæres mobilium, quam immobilium,* and should be heirs *respective in suo genere, tam active quam passive.*—THE LORDS found, that the heir should have his relief off the executor of all moveable bonds, and the executor should be relieved by the heir of all heritable bonds. And this after they had thought upon it two or three days, 30th July 1630. Found likewise, that if as well the debtor die before the term of payment in a bond, as the creditor, the bond is moveable, and the executor only liable to it without relief off the heir.

Spottiswood, (EXECUTOR.) *p.* 121.

1662. *December* 20. LADY TARSAPIE *against* LAIRD of TARSAPIE.

No 9.
The question whether the heir is liable to aliment the defunct's family till the next term after his decease, was superseded till diligence should be done against the moveables.

THE Lady Tarsapie pursues the Laird of Tarsapie, who succeeded as heir to his brother, her husband, for the aliment of the defunct's family, till the next term, after his death, and specially for the aliment, and ——— to the pursuer's son, heir apparent to his father. The defender *alleged,* Absolvitor; because the libel was no ways relevant against him as heir, but, by the constant custom, the entertainment of the defunct's families was ever a burden on their moveables, and upon their executry. The pursuer *answered,* Though it was ordinarily retained off the moveables, yet the heir was also liable, seeing the defunct was obliged to entertain his servants and children, at least to a term, but much more when there were no moveables, or where the defunct was rebel, and the donatar intromitted. The defender *answered,* That it was *novum* to convene an heir on this ground, and that the allegeance of there being no moveables held not here; neither is it relevant that the moveables were gifted, unless it had been declared before the defunct's death and possession obtained, otherways the relict ought to have alimented the family out of the moveables, which would have liberated her from the donatar, and is yet ground against the donatars. The pursuer *answered,* She could not retain; because the donatar, with concourse of the defender, did put her *brevi manu* from the defunct's house, and all the moveables.

THE LORDS having amongst themselves considered this process, did put difference between the aliment of the apparent heir, and the rest of the family: As to the heir, they found, that albeit he was never infeft, yet, as apparent heir, he had right to the mails and duties from his father's death, until his own death, though the terms had been to run before he was born, being *in utero,* and that the defender, in so far as meddling with the rents, was liable for the apparent heir's aliment; but, for the rest of the family, the LORDS superseded to give

answer till diligence were done against the donatar, or other intromitters with the moveables. No 9.

Fol. Dic. v. 1. p. 357. Stair, v. 1. p. 150.

1673. *June* 10. WHITE *against* WHITE.

No 10.
A man dying, left a daughter of one marriage, a son and a daughter of another. The son, after making up titles to part of the estate, also died. His full sister entered heir to him in that part, and she and her half-sister made up titles to the remainder, as heirs-portioners to their father. Found, that the relief of the father's debts, betwixt the two sisters, ought to be in proportion to the respective parts to which they succeeded, whether immediately to the father, or mediately by representing the brother.

JOHN WHITE having been infeft in the lands of Nether Whillonhill, and having had a several right to the teinds thereof, died, leaving a son and two daughters; after his death the son obtained himself infeft in the lands, by a precept of *clare constat*, but did not establish the right of the teinds in his person, and died without issue; after his decease Janet White, who was his sister by both bloods, is infeft as heir to her brother in the land, excluding Christian, who was but only sister by the father; and both Christian and Janet entered heirs-portioners to John their father, and thereby had right to the teinds; whereupon Christian pursues Janet, who possest both land and teind, to pay her the half of the teind-duty; who *alleged* compensation, in so far as Janet the defender had paid 1000 merks of their father's debt, and thereby had recourse against Christian the pursuer, as one of the two heirs-portioners to her father, for the half of that debt. It was *answered* for Christian the pursuer, That her sister the defender could not seek recourse or relief against her as heir-portioner for the equal half, but only proportionably effeiring to the heritage of the father, both in land and teind; for albeit a creditor of the father's might have recovered payment against the pursuer for the half, as one of the two heirs-portioners, so a creditor might also have obtained payment from the defender Janet, of the whole debt as heir to her brother, who was heir *passive* to his father; so that as the pursuer is heir immediate to her father in a half, so the defender is not only heir immediate in the other half of the teinds, but is sole heir by progress to her father in the land; and, in either case, when either party were pursuing for relief, they are in the condition as different heirs of the same defunct; and law and custom hath cleared the order and relief of all heirs and successors amongst themselves, viz. that heirs of line must relieve heirs of tailzie and provision; and as to heirs-portioners, when they come to divide their succession, or to get relief of the defunct's debt, they must have collation of what portion or provision they got from the defunct, and according thereto the division and relief must proceed; and albeit a case of this nature hath never occurred to be decided till now, it must be decided according to equity, and to like cases already determined; and there can be no doubt, but that, in equity, the benefit and burden of the father's estate and debt should proceed proportionally, and that all that represent him should pay his debt, according to the benefit they have received; for, upon the same ground of equity, the collation of goods amongst heirs-portioners was introduced. It was *answered* for the defender, That equity cannot rule this case; but it is determined by the course of law,