

S E C T. III.

Heritable debts due by Husband or Wife.

1664. July 19. SCRIMGEOUR *against* EXECUTORS OF MURRAY.

No 21.

SEEING the relict can have no benefit of heritable debts due to her defunct husband, neither has she detriment by heritable debts due by him; and therefore the heritable debt cannot exhaust the moveables to diminish the relict's part.

Fol. Dic. v. 1. p. 386. Stair.

* * See this case No 4. p. 463.

1668. December 23. MARGARET M'KENZIE *against* ROBERTSONS.

No 22.
The relict's third of moveables is not burdened with bonds due by her husband bearing annualrent.

MARGARET M'KENZIE pursues the executors of her husband to pay her share of the moveables, who *alleged* absolvitor, because there was as much debt as would exhaust the whole moveables. It was *answered, Non relevat*, unless it were alleged that the executors had paid the debt; for the debts being yet due, it is *jus tertii* for them to allege thereupon; neither can this pursuer propone allegiances of payment, compensation, or any other, or the defenders reply upon the debts belonging to third parties, unless they were pursuing themselves; but the pursuer is content to find caution to repeat her share in case they were distrest.

THE LORDS repelled the defence, but prejudice to the executor to suspend on double pointing, calling the creditors.

It was further *alleged* for the defenders, That they must have allowance of sums bearing annualrent since 1641. It was *answered*, That no such sums can burden the relict's part, because, by the act of Parliament, the relict has no share of such sums if they were due to the defunct; and therefore, *a pari*, she cannot be burdened with such sums, being due by the defunct. The defenders *answered*, That the act of Parliament excludes relicts from such sums as bear annualrent, being due to their husbands, but doth not bear, that they shall be free of such sums due by their husbands; and statutes being *stricti juris*, the Lords cannot extend them beyond their sense to like cases. The pursuer *answered*, That the Lords always did, and might explain, and extend acts of Parliament to cases implied, and consequent, albeit not verbatim ex-