

* * * Fountainhall reports the same case :

No 12.

A COUNT and reckoning for her intromission as tutrix to her daughter, wherein she craves her annuity of ten chalders of victual for the crop 1673.—*Alleged*, Her husband outlived Martinmas 1673, and so it fell under her executry.—*Answered*, Candlemas is the term of payment contained in her infeftment, and he dying before that, her annuity was due.—THE LORDS found Candlemas was only adapted for the case of the tenants, who paid their victual then ; but seeing her husband outlived Martinmas, they found no annuity due for that crop ; but it would be otherways in a heritable bond, liferented by the wife, bearing payment of the annualrents at Candlemas and Lammas ; because annualrents are not like victual, but are due *de die et diem*.—Then *alleged*, She must have the half of executry due to her as relict, because her daughter being heir, has no interest except she collate the heritage with her.—THE LORDS found the heir was not bound to collate her heritage, but only to other younger children ; and that the heir had right to a legitim of her father's moveables ; but if the heir had already got moveables, she would have been obliged to have collated those with the relict, as has been oft decided in other cases.—Then it was *alleged* against the relict, she could have no share of the moveables, because her husband left her a legacy of 6000 merks, which law presumes to be in satisfaction of all she can ask or claim *qua* relict.—THE LORDS repelled this, in so far as it may exclude her from her share of the moveable, because the legacy was out of the defunct's part, which he may dispose on at pleasure ; but if the relict were claiming a part of the defunct's part, for executing the testament, the legacy, if it be more, it would exclude her ; and if it be less, it would be imputed in her claim *pro tanto*. See HUSBAND and WIFE. *Fountainhall, MS.*

1695. February 19. SINCLAIR and HERIOT *against* SINCLAIR and REDPATH.

HALTON reported Sinclair and Heriot *contra* Sinclair and Redpath. Two nieces of Mr Robert Sinclair, minister at Dirleton, were competing, as nearest of kin. The eldest being married in his lifetime, in her contract of marriage he obliged himself to pay 4000 merks of tocher with her ; and he dying before the second was married, in the division she also craved to have the like sum allowed to her, at least that her sister should collate her 4000 merks ; seeing she being co-heir *confusione tollebat* obligation.—*Answered*, *Quoad* that I am a creditor, and must deduct it *jure præcipui* out of the whole ; and you can only have the half of the rest.—THE LORDS found, That the 4000 merks was to be reputed a debt of Mr Robert's, and as his goods divided equally, so also his debts, and consequently each of them paid the half of it ; which made the eldest to have 2000 merks more than the youngest.

Fol. Dic. v. 1. p. 148. Fountainhall, v. 1. p. 671.