No 4. valued, but the furniture was not. At the husband's death the shop goods were of less value than at the date of the inventory; but it was found, that she could claim no more than the half of her husband's effects at the time of his death.

goods, both by inventory, with this difference, that in the inventory of the merchant goods, every particular was valued, and the total sum extended; but the other contained only the particulars of the furniture, without any value put upon them; from which it was contended, that as she was creditrix in the *ipsa corpora* of the houshold furniture, so she was in the value of the merchant-goods as at that time, because it could not be said with any propriety, that she was creditrix in the *ipsa corpora* of the merchant-goods, which, from the nature of the thing might next day have become the property of a purchaser.

It was *answered*, That the design and meaning of valuing the contents of the inventory of goods was no other, than to direct them to a prudent and accurate management in the sale; but it could not be thought, that the husband intended that she should be creditrix in the extent of the sum to which they were valued; for had he so designed, it was easier for him to have provided her to a sum equal to it in her contract; and therefore, as the property, as well as the administration of the merchant-goods remained with the husband during his life; so the wife, by her contract of marriage, was only creditrix for the half of the merchant-goods that should be in the husband's possession at the time of his death.

"THE LORDS found, that the defender, by her contract of marriage, was only creditor for the half of the value of the goods and gear at the time of the husband's decease."

Reporter, *Lord Pancaitland.* Act. *Ja. Fergusson*, senior.
Alt. *Hugh Dalrymple*, senior. Clerk, *Gibson.*

Fol. Dic. v. 3. *p.* 307. *Edgar, p.* 98.

No 5.

1729. *July* 18. ANDERSON *against* ANDERSON.

IN a contract of marriage there occurred the following clause: 'And in case 'there should happen to be only one daughter, he obliges him to pay the sum 'of 18,000 merks; if there be two daughters, the sum of 20,000 merks, 'whereof 11,000 to the eldest, and 9,000 to the youngest; and if there be 'three daughters the sum of 30,000 merks, 12,000 to the eldest, 10,000 to the 'second, and 8,000 to the youngest.' A fourth daughter having existed of this marriage; in a process betwixt her and the other three, the question occurred, whether she could have any share of the 30,000 merks upon the presumed will of her father, or if she was to be left to insist for her legal provision *ab intestato?* THE LORDS found the fourth daughter entitled to a proportion of the 30,000 merks, and found her proportion, suitable to the provision made in the contract of marriage, to be 4,500 merks; so as to restrict the eldest daughter to 10,500 merks, the second to 8,500 merks, and the third to 6,500 merks. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 441.