

1773.

 DUNCANS
 v.
 FOWKE.

come under the power of Mr. Biggar; and that the consent of the appellant was only requisite, when that level was carried into any neighbouring grounds, other than, or beyond Woolmet.

After hearing counsel, it was

Ordered and adjudged that the said interlocutor complained of in the said appeal be, and the same is hereby reversed. And it is hereby declared that John Biggar had no right, by the lease entered into between him and the appellant, to communicate the level carried through the appellant's lands, to the lands of Edmonstone or Woolmet, without the appellant's consent first had and obtained. And it is further ordered, that the cause be remitted to the Court of Session, to do thereupon what shall be agreeable to law and justice.

For the Appellant, *Ja. Montgomery, Al. Forrester,*
John Ord.

For the Respondents, *Al. Wedderburn, Henry Dundas.*

Not reported in Court of Session.

MARGARET and ELIZABETH DUNCAN,	-	<i>Appellants;</i>
FRANCIS FOWKE,	- - -	<i>Respondent.</i>

House of Lords, *5th February 1773.*

VESTING OF LEGACIES.—Circumstances in which legacies held to vest.

For full report of this case, see Morison, 8092.

The circumstances were these. A testator, by his will, bequeathed one half of his personal estate to his two nephews, declaring that his will was to take place at the death of his wife, and that until that event she was to have the liferent interest thereof. The nephews survived the testator, but died before the death of the liferenter. The Court of Session held that the legacies vested in the nephews. And, on appeal to the House of Lords, this judgment was “affirmed.”

For Appellants, *J. Montgomery, Alex. Lockhart, J. Mac-*
laurin, Tho. Lockhart.

For respondent, *Al. Wedderburn, John Madocks.*