

Angus Linklatter took burden upon him, for his son-in-law's serving his wife heir: He was bound only that his daughter, being served, should denude. 2. *Esto* the defender were liable as representing his grandfather, yet since he is but one of four heirs-portioners, he can only be liable to implement a fourth part of his grandfather's obligation. *L. 86. §. 3. ff. de Legat. 1.*

In respect it was ANSWERED—1. As Angus Linklatter stood obliged that Catharine, his daughter, should share equally: so the daughter obliged herself that how soon she fell to have right, she should provide her share to the bairns of the second marriage. The father was bound, as burden-taker for her, to make her obligation effectual. The reserved power to use and dispose, was intended only for alienating to strangers, as his circumstances might require; which not having happened, the obligation in favours of Catharine's bairns of that marriage stands binding. In whomsoever the neglect was, in not entering Catharine heir to her father, the heirs of the marriage ought not to be prejudiced. The *bona fides* in contracts of marriage obligeth the grandfather, as burden-taker for his daughter, to supply that defect; which is still practicable by the defender, his heir. 2. The doctrine is good in the general, that heirs-portioners are liable only *pro virili parte*; but there is this speciality in the present case, that the other three heirs-portioners stand only infeft in their own fourth parts; whereas the defender stands wrongfully infeft in that fourth part which, by the contract, was provided to belong to the pursuer, as heir of his mother's second marriage. The text brought out of the civil, [law] for the defender, doth not come home to this case; for there were several heirs equally instituted, and the testator bequeathed a piece of land belonging to one of them to a third party, which the whole co-heirs were obliged to redeem, or pay the price; whereas here there was no institution of heirs, nor settlement made by the grandfather, but only he provided his daughter's fourth part of his land to the heirs of her second marriage, and thereby in effect disinherited the defender.

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1713. *February 12.* The POOR and KIRK-SESSION of AIR, Supplicants.

THE Lords granted the benefit of the poor's roll to the poor and kirk-session of Air, for prosecuting two depending actions, at their instance, against the magistrates of Air, which they could not otherwise do without encroaching upon the poor's stock.

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1713. *July 24.* The CREDITORS of the deceased ROBERT ROSS of Auchlossin, competing.

IN a ranking of the creditors of the deceased Robert Ross of Auchlossin, and Francis Ross, his son; Arthur Forbes, brother to the laird of Balflug, produced