

1736. February 3.

KER *against* THOMSON.

No 13.

WHERE a defunct's succession splits, and he comes to be represented by two different heirs of line, which may happen in many cases, the heirs have no total relief one against another, but only in proportion to the subjects they succeed to: And, therefore, an heir having made up titles to a part of his father's estate, and his sister, after his decease, having made up titles to what remained *in hereditate jacente* of the father, neglecting her brother's succession as overcharged with debt; in a question betwixt her and her brother's creditors, with respect to a bond of provision granted to her by her father, upon which she was a preferable creditor, the LORDS found, that she could not draw the whole out of her brother's estate, but proportionally out of both, as well that part she succeeded to, as the part that her brother succeeded to. See APPENDIX.

*Fol. Dic. v. 1. p. 356.*

1740. July 18.

SIR JOHN HOME of Renton.

No 14.

AN heir having voluntarily paid a moveable debt, which bore no annualrent, and claiming to be relieved *cum omni causa*, it was found, that no annualrents of any sums, voluntarily paid by the heir, other than such as by the constitution of the debt did bear annualrent, were to be stated as a burden upon the executry.

*Fol. Dic. v. 3. p. 255. Kilkerran, (HEIR and EXECUTOR.) No 1. p. 229.*

1745. January 23.

JANET and MARY RUSSELS, and their Husbands, *against* RACHEL RUSSEL, and her Husband.

No 15.

DAVID RUSSEL, surgeon in Kennoway, having no children, settled his small land-estate upon Mr William Dall, the husband of his eldest sister Rachel, in liferent, and on Thomas Dall their son in fee, and the heirs-male of his body, whom failing, &c, with and under the reservations, burdens, conditions and faculties after exprest, viz. reserving his own liferent and power to alter, sell, or burden without consent of the heirs of tailzie; and then followed a clause in the following words: ' And I hereby expressly burden this right and disposition, ' not only with the payment of my funeral charges, but also with the payment ' of my three sisters german, their portions yet resting by me to them, and ' with payment of all the just and lawful debts that shall be resting by me the

A disposition of heritage, with burden of debts, does not preclude the heir from being relieved by the executor.