

SECT. II.

Succession of Moveables AB INTESTATO.

1626. July 4. HALIDAY *against* HALIDAYS.

In an action against executors, alleged, The pursuers, executors to their father, can have no right to a deal or portion of their goodsirs, to whom the defenders are executors, because the pursuer's father died before. De action. Hæred. 5. Replied, The goodsir was obliged by the pursuer's father's contract of marriage, that their father, the time of the goodsir's decease, their own father, should have a deal and portion of his goods; and so the pursuers being the father's executors, and representing him, and on life, the time of the obliged goodsir's decease, have right to a portion and deal of his goods. Admits the reply.

Clerk, *Durie*.

Fol. Dic. v. 2. p. 398. Nscolson MS. No. 185. p. 132.

No. 19.

1663. February 13. WALTER RIDDELL *against* _____.

Walter Riddell, as executor dative confirmed to one Liddell in the Canongate, pursues his debtors to pay. Compears a donatar, as *ultimus hæres* and craves preference. The pursuer answered, *first*, His gift was not declared; *2dly*, He offered to prove the defunct had an agnate, viz. an uncle, or an uncle's son; which the Lords found relevant to be proven by witnesses.

Stair, v. 1. p. 179.

No. 20.

1729. July 5. GEMMIL *against* GEMMILS.

The subject of competition was the executry of Janet Gemmil, wherein her nephews and nieces, children of her full sister, were preferred to her sister consanguinean, upon this medium, that they were descendants by the whole blood, whereas their competitor was only related to the defunct by the half blood; and it was argued, That amongst persons of equal degree, since the whole blood excludes the half-blood, it follows that all the descendants of the whole blood do exclude the half-blood; for the difference of a degree never enters into the consideration, where there is a separate ground for devolving the succession; just as a great grand-child is preferred in the succession of his predecessor to the brother or father, though nearer of kin to the defunct; and all this not by right of repre-

No. 21.