

* * * Fountainhall reports the same case :

ISOBEL DICKSON and Robert Paterson her husband against Young for paying bygones of her liferent and to keep her free of public burdens. *Alleged, Intus habet* for bygones, by intromission with the moveables. *Answered*, By law she had a third. *Replied*, There was more debt than all the moveables, and so no third due. THE LORDS sustained the allegiance, and found she could have no third, till her own provision were once fulfilled; but deducted funeral charges, servants fees, &c. from her intromission; as also, found her jointure behoved to be free of public burdens, and by way of exception summarily admitted her son's action for aliment against her.

Fountainhall, MS.

* * * The like was decided June 1729, Stewart against Hall, *See APPENDIX.*

1678. July 16.

MURRAY against MURRAYS.

A BOND of provision delivered in *liege poustic*, like other debts, comes off the whole head of the executry.

Fol. Dic. v. I. p. 280. Stair.

* * * *See* This case, No 9, p. 2372.

1713. June 20.

ISOBEL MONCRIEF and Her HUSBAND, against CATHARINE MONIPENNY; Relict of George Moncrief of Sauchop.

IN the action at the instance of Isobel Moncrief and her Husband, against the Lady Sauchop, mentioned 27th January 1713, *voce* HUSBAND AND WIFE, the defender claimed, *jure relictæ*, the half of all the defunct's moveables, free of the expenses of her husband's funeral, and the building a monument to him, and the confirmation of his testament, and her own mournings, and the aliment of the defunct's family till the next term after his decease, all which she *alleged* must affect the dead's part only, and could not lessen her legal share; because, *imo*, Nothing diminisheth the whole head, but what is due by the husband before his death, and he could not properly be debtor for his funeral charges before his decease, when these had no being, and there was not a creditor. Now, a relict hath right to her share of the husband's moveables at the moment of his death; not by any succession, but *jure proprio* by division of the goods that were in communion during the marriage, under the husband's administration; upon dissolution whereof, the wife acquires no new, but con-

No 3.

No 4.

No 5.

Funeral expenses, aliment of the defunct's family till the next term after his decease, the expense of confirming his testament, and the relict's mournings; do not affect the dead's part only, but come off the whole head of the executry; all these being considered as the defunct's debts.