

extend to no more of the mains, but to so much thereof, as was then possess by the saids special tenants, and could not extend to these lands acclaimed, wherein this defender was infest, albeit after her contract of marriage; and found these words, (possess by these tenants,) not to be demonstrative, but to be taxative, and to restrict her right to so much of the mains, as then was possess by them, and that she could have right to no more; therefore admitted to the defender's probation, that these lands acclaimed were, at that time of the suspender's infestment, possess by other tenants condescended on; and repelled the answer made by the suspender, bearing the same to be a part of the mains; for albeit they were so, yet by the restriction of her infestment, she had no right thereto.

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 145. Durie, p. 699.*

No 12.

1667. July 17. HERMISTON against L. SINCLAIR.

HERMISTON being bound to pay to the Lord Sinclair, his brother, out of the first and readiest of the rents of the estate of Sinclair, a certain annuity;

THE LORDS found, That he ought to pay the said annuity entire, though he pretended he was not obliged simply, but out of the rents; and that the said rents, in respect of the real burdens upon the estate, and the low rates of victual, would not extend to satisfy the same; seeing he was obliged to pay out of the first and readiest.

*Fol. Dic. v. 1. p. 145. Dirleton, No 99. p. 39.*

No 13.

1673. January 21. FORBES against FORBES.

THE LAIRD of Leslie having legate to his grand-children 1000 merks out of the rests due by his tenants; they pursue his executor for payment, who *alleged*, That this being a special legacy out of rests, if there was not so much rests, they cannot crave that legacy out of any other of the defunct's estate. *2do*, It being a special legacy, the legatars might have pursued the tenants themselves, and the executor is only obliged to assign.

THE LORDS found, That this legacy was only to be payable out of the rests, and no otherways performable; but found, that the executor was liable to have done diligence against the tenants within the year, when the hypothec remained upon their goods; and that this was not in the condition of special legacies, or sums due by bond, in which it is sufficient to assign whenever the legatars insist.

*Fol. Dic. v. 1. p. 145. Stair, v. 2. p. 154.*

No 14.

A legacy of 1000 merks, out of the rests, due by the tenants, was found payable out of the rests only, and not otherwise performable, if there was not so much of rests.