

1610. *January 10.* LADY GALGIRTH *against* HUNTER.

No 3.

A lady conjunct fee infest in lands *cum sylvis nemoribus, &c.* in the *tenendas*, may cut woods though not infest therein *per expressum*.

THE relict of umquhile young Galgirth, spouse now of ———, being pursued by Hunter and others, alleging them to have bought the wood of ——— from the Laird of Galgirth, for her spoilation of the trees of the said wood; it was *excepted*, That she did no wrong, because she was infest by the pursuer's author, alleged feuar of the said wood, to them in conjunct fee with her husband in the lands of Park, whereof this wood was part and pertinent, and, by virtue of her infestment, in possession, and so did no wrong. It was *answered*, That her infestment of the lands gave her no right to the wood, which was *regalis*, unless she had been infest therein *per expressum*. She *replied*, That woods and shaws were not *regalia*, but only forests, and it was sufficient to her to be infest in her conjunct-fee lands *cum silvis nemoribus virgultis*; in the clause *tenendas*, especially seeing the man who was common author to both parties was not seased in the woods *per expressum*. Which answer the LORDS found relevant.

*Fol. Dic. v. 1. p. 548. Haddington, MS. No 1721.*

No 4.

1682. *February 14.* The LADY LAMINGTON *against* Her SON.

THE Lady Lamington pursued her son the Laird for the third of the coal of Penston and Hoprig, as due to her by reason of terce, whereunto she was served out of these lands. THE LORDS found, That terce was due only of the lands above ground, and that the Lady tercer had no right to the profits of coal, or any thing under ground, but in so far as was needful for her own use, and she could not break the ground to work coal and sell it to others, nor could participate of any profit gotten thereby, but only should have as much as might serve herself.

*Fol. Dic. v. 1. p. 548. Spottiswood, (TERCE.) p. 336.*

\* \* \* Kerse reports this case :

FOUND no terce of coal-heughs *nisi ad usum proprium*.

*Kerse, MS. fol. 90.*

\* \* \* This case is also reported by Durie :

IN an action by the Lady Lamington against the Laird, for payment of the terce of the coal of certain lands, to the terce of which lands she was lawfully served and kenned, and thereby claimed the third of the profit of the said coal, which was win within the said lands; the LORDS found, that the Lady tercer