1679. *February.* Bell *against* Park.

No 21.

My Lord Dirleton having disponed his lands to young Craigentinny, reserving his liferent, and having died after a part of the mansed lands were sown, and before the barley-seed was cast in the ground:

In a competition for the crop betwixt Craigentinny and Dirleton's daughter his executor, *alleged* for Craigentinny, That, by the common law, *usufructuarius* hath no right to the fruits, which are *pars fundi, nisi perceptione et post separationem;* and though our practique hath fixed upon legal terms of Whitsunday, &c. before separation, yet the party dying before that term, ought to have no more right to the *fructus pendentes*, than was allowed by the common law to one dying *ante separationem*; 2*do*, Our practique hath relaxed this, and given the benefit of the mansed lands sown before his death; but the profit of lands not sown, or teinds thereof, ought not to belong to the liferenter's executors, but only the expenses of labouring.

Answered for the Executor, Our customs vary from the civil law; for, although a person live after Michaelmas, the time of separation, yet, if they die before Martinmas, they lose that term, &c.; 2*do*, This is not a liferent by constitution, but by reservation, which is more exuberant; 3*tio*, By the custom of the Commissary Court, the crop of mansed lands, both sown the time of the decease or thereafter, are confirmed in favour of children executors, and is called the executry crop; 4*to*, The practique 1679 is but a single decision.

The Lords delayed to determine this point.

Harcarse, (Liferents.) *No* 673. *p.* 191.

1737. *July* 26.

Alexander Ferguson *against* William Ferguson of Auchinblain.

No 22.
A liferenter, by reservation, is entitled to cut *sylvæ cæduæ*, according to the custom of the country where the woods grow.

The said William Ferguson, in his son Alexander's contract of marriage, disponed to him the lands of Auchinblain, with the woods and hail pertinents, reserving his own liferent of the premisses. Upon these lands were two small woods, which Auchinblain, imagining he had a right to dispose of, (in virtue of his reserved liferent,) sold one of them that was ready for cutting; in order to stop which, Alexander brought a declarator to have it found, that his father had no title thereto. And the arguments urged in support of this action were, that, though the woods in question are what the law calls *sylvæ cæduæ*, yet the defender had no right to the wood itself, but only, in case it was cut by the pursuer, the liferenter might have the useless shoots that must be cut off, in order to its growing in due course; agreeable to *L.* 10. *De usu fruct.* and the act 25th, P. 1491. ratified by the 15th act, P. 1535.; whereby it is 'pro-