

1680. July 16.

No 8. Sir JAMES STANFIELD *against* WILSON of Spango, and the Earl of QUEENSBERRY.

WHEREVER references are made to the Lords from other courts, they use summarily to call them in presence without order of the roll. THE LORDS found the Countess Dowager of Carnwath, being infest *cum silvis* in liferent, that it gave her interest to interrupt the heritor and his tacksman from cutting *in ipso initio*, till a portion should be set apart for her liferent use, and ordained a speedy cognition of the wood to be taken, and a part to be laid aside for the liferentrix's use, for repairing the houses, &c.; the report to be made within eight days, that Sir James's lead-works might not be out for want of timber. Yet Craig, page 189, thinks a liferenter cannot hinder an heritor to sell and dispose of his wood and coals, and cites decisions for it. See APPENDIX.

*Fol. Dic. p. 1. p. 548. Fountainball, MS.*

1683. March 28. Earl of DUNFERMLINE *against* The Earl of CALLANDER.

No 9.  
A conjunct  
fiar cannot  
cut wood for  
sale, though  
he may for  
necessary  
use.

IN the process pursued at the instance of the Earl of Dunfermline, as having right from his father, who was heir served and retoured to his grandmother, intended against this Earl of Callander, as representing his uncle, who was obliged to provide the half of the conquest during the marriage betwixt the Lady and him, to her and her heirs, in case there should be no heirs of the marriage surviving; the LORDS found the obligation to provide the half of the conquest to his Lady and her heirs did state him only to be in the case of a conjunct fiar, and so could not cut the woods for selling, except for necessary use.

*Fol. Dic. v. 1. p. 536. P. Falconer, No 64. p. 142.*

\*.\* Harcarse reports this case :

My Lord Callendar, who had a conjunct-fee of the conquest lands, having sold the woods of Callendar, it was found, that the half of the price thereof did fall to the Lady's heirs, who had right to the fee of the half of the conquest; albeit it was *contended*, That though a liferenter by constitution have but *usum*, yet conjunct fiars and liferenters by reservation have *usumfructum*; and that Craig is of opinion they may sell woods, and *de consuetudine* parents after resignation of the fee of lands to themselves and their wives in conjunct-fee, and to the heirs in fee by way of destination, use to dispose of the woods that come to be cut during their lives. But it would be a different case if resignation were made to any nomination.

*Harcarse, (LIFERENTS.) No 672. p. 191.*