

1696. July 3.

LADY BORTHWICK, Supplicant.

THE LORDS having advised the probation of the roup of the Lordship of Borthwick, in the process of sale, pursued by the creditors, and found the estate bankrupt; the Lady gave in a bill, craving the sale might not prejudice her jointure, which was so declared; 2do, She *alleged*, That she ought to have the faculty and power of cutting as much of the timber and woods growing on her life-rented lands, as would repair and uphold the houses on the ground. To which it was *answered*, That her infestment not bearing the woods, but allenarly the lands, and it not being *a sylva cædua*, which uses to be cut by hagg, and for profit, she ought to have no such liberty, else the fiar's planting might be destroyed by liferenters, who, by the acts of Parliament, are obliged to preserve the planting and policy about houses; and *ususfructus* is always understood *salva rei substantia*. Some of the Lords argued, that she might use it as her husband did before, *et tanquam bonus et frugi paterfamilias* without wasting, only for the necessary use of the ground, even as a relict will get as many coals out of a going heugh, in her liferent lands, as may serve the use of her family; and Craig tells it was so decided, both in the case of woods and coal-heughs, *lib. 2. Feudor. tit. 8.* THE LORDS, considering this planting was valued to L.2500 Scots, and if the Lady were permitted, under the pretence of reparations, to dispose of it, it would not only diminish the price, but discourage buyers, and that she had no specific infestment on the wood, and that her husband's right was *a jus pinguius domini* more than what a conjunct fiar could claim; therefore found she had no right to cut any part of the woods, though to the use of the ground, but she and the tenants ought to uphold them upon their own expenses. This seems to debord from the ancient decisions; but then lands were not sold by roup, to which this privilege of widows might be a great discouragement and let.

*Fol. Dic. v. 1. p. 548. Fountainhall, v. 1. p. 726.*

1700. January 25.

The Marquis of DOUGLAS against The Countess of SUTHERLAND

THE Marquis of Douglas pursues a declarator against the Countess of Sutherland, that though she be liferenter of the barony of Preston and Bunckle in the Merse, by virtue of her contract of marriage with the Earl of Angus, his father, yet the jurisdiction and right of regality belongs to him as fiar, and that she may be discharged to exercise the same, by constituting a Bailie of regality, or to judge any farther than to give decreets against the tenants to pay their farms to her. *Alleged* for the Countess, She opposed her contract and charter, whereby the lands, lordship, barony and regality of Bunckle is expressly disposed to her, comprehending the particular lands therein mentioned, which gave her a clear right to the jurisdiction and exercise of the right of regality,

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## No 10.

A liferentrix, when the estate was going to be sold, craved power to cut as much wood as would repair the houses.—Refused.

## No 11.

Lands erected into a barony being liferented by a lady as her jointure, it was found that she had right to the jurisdiction of regality within the bounds of her liferent lands.

No 11. in so far as extended to her liferent lands, for she claimed nothing of the superiorities belonging thereto; and accordingly she had been many years in possession, till of late she was interrupted by the Marquis; and though, in the King's charter, the inserting of the clause *cum curiis earumque exitibus* in the *tenendas* is not much regarded, being only an extension of stile, yet here it is in the dispositive clause, and her charter *de me*; and Craig, page 221. and 264. shews, that an heritor disponing with reservation of his own liferent, may enter vassals as well as the fiar, as was found in the case of one Cranston there cited.\* *Answered* for the Marquis, That the design of wives' jointures is but a liferent or *ususfructus*, carrying a right to the rents of lands, but is never designed to invest her with the jurisdiction, which remains with the proprietor, as Sir George Mackenzie, in his *Criminals*, Tit. anent the jurisdiction of regalities, § 4. affirms; and the mentioning the regality in her right is no more but *designative*, and all one as if it had said, 'She shall liferent such lands lying within that 'regality.' THE LORDS found she had right to the jurisdiction of regality within the bounds of her liferent lands.

*Fol. Dic. v. 1. p. 548. Fountainball, v. 2. p. 84.*

1752. December 21. LANG and CROSS against DUKE of DOUGLAS.

No 12.  
A wood had been sold in hags periodically by a liferentrix. A hag had been sold and partly cut at her death. Found that the fiar was entitled immediately to stop the cutting.

THE Countess of Forfar, infeft in the barony of Bothwell, with the woods thereof, for her life, sold a wood which was in use to be cut every 20 years for the bark. She died before the cutting was finished; and the Duke of Douglas, who was heir to the Earl of Forfar in that estate, interrupted the cutting *via facti*. This produced a process, in which it was *contended* for the Duke, That a liferentrix, though woods be mentioned in her infeftment, has no power to cut wood, but for the use of the houses, because the fruits only belong to her, and not the substance; and Craig, lib. 2. dieg. 8. § 17. holds that a tereer cannot dispose of a *silva cadua*, but that the fiar may dispose thereof even during her right. *2do*, At any rate, the right of the liferentrix ceases with herself, and the trees growing at her death, being *pars soli*, must belong to the heir. The President delivered his opinion, that a liferenter has no power to sell wood. But as the question concerned only that part of the wood which remained standing at the death of the Countess, there was no occasion to determine the general point; and it was only found that the Duke did lawfully interrupt the purchasers from cutting trees after the Countess's decease.

*Fol. Dic. v. 3. p. 386. Sel. Dec. No 29. p. 33.*

\* \* This case is reported in the Faculty Collection :

THE late Robina, Countess of Forfar, was, by her contract of marriage and other liferent rights, provided to the liferent of the lands and lordships of Bothwell and Wendall, and, *inter alia*, 'of the woods growing thereupon, to be