

1770. January 17. MRS JEAN HAMILTON *against* MRS JEAN WOOD.

COMPETITION—TERCE.

Competition between an Adjudication and the right of Terce.

[*Faculty Collection, V. p. 27 ; Dictionary, 15,858.*]

PITFOUR. A right of terce is of the same nature with a liferent locality. A localist, if she lays out, loses the rents in time past, and so does a tercer. She can only obtain payment of bygones by adjudging upon the implied warrandice.

COALSTON. The two claims of terce and locality are precisely similar ; consequently, each has a right to levy rents *in medio*. I think, further, that the creditor-adjudger has not right to more than two-thirds ; and that the other third belongs to the widow as terce.

AUCHINLECK. Till a woman is kened in her terce, the subject is in the *hæreditas* of her husband, and is affectable by his creditors.

KAIMES. The wife is preferable ; but still, if she does not, the creditors may, as less preferable creditors are received when more preferable do not claim.

On the 17th January, 1770, “ The Lords found the widow entitled to the rents *in medio*, in payment of terce, from her husband’s death, but not to rents levied by the adjudger ;” varying Lord Monboddo’s interlocutor.

*Act. Ilay Campbell. Alt. J. M’Claurin.*

1770. January 26. ALEXANDER BOWER, and OTHERS, *against* RACHEL, &c. BROWNS.

CLAUSE—HERITABLE AND MOVEABLE.

A Deed containing dispositive words, held to be a Disposition and not a Testament : but the words, “ Means and Effects, Heritable and Moveable,” in said Deed, found insufficient to convey a proper heritable subject.

[*Faculty Collection, V. 32 ; Dictionary, 5440.*]

AUCHINLECK. This deed is so devised as to carry every thing belonging to the deceased. Means and effects will comprehend a house.

HAILES. I doubt as to that. Means and effects cannot, in propriety of speech, comprehend any thing but moveable subjects, and *nomina debitorum*. The