

Observed on the Bench: The character of widow and the right to terce are not inseparable. The latter may be renounced, either expressly or by implication; and, like the *jus mariti*, it may be excluded by the terms of the grant, which are strictly obligatory on the widows and children of the substitutes, without irritant and resolute clauses. The terce and courtesy are precisely in the same situation. They are merely a distribution of the estate, taking place only in those cases where there is no positive agreement of parties; and both are excluded by the uniform style of entails.

The Lords (9th June) found, "That the pursuer is effectually excluded from her claim of terce by the entail, under which her husband possessed the estate of Hoselaw."

Upon advising a reclaiming petition, and answers, they unanimously adhered.

Act. *Solicitor General Blair, R. H. Cay.* Alt. *M. Ross, Neil Ferguson.* Clerk, *H.*

D. D.

*Fac. Coll. No. 186. p. 447.*

1796. February 24.

DAME MARY MEAD *against* ARCHIBALD SWINTON, Common Agent in the Ranking of the Creditors of the late Sir Samuel Hannay.

Sir Samuel Hannay died infest in the lands of Kirkdale, on which there was an old mansion-house, where he and his family resided. A few years before his death, he built, close by it, a more commodious house, where he proposed to have lived, but he died before it was completed.

Lady Hannay claimed the old mansion-house, as an appendage to her terce, on the ground, that where there are two mansion-houses, the widow is entitled to the second; Craig, L. 2. D. 22. § 29.; Ersk. B. 2. Tit. 9. § 48.; 29th June, 1773, Montier, No. 38. p. 15859.

She was opposed by the common agent in the ranking of Sir Samuel's creditors, who stated, in the *first* place, That in point of law, it seemed extremely doubtful, if in any case the widow had right to the second mansion-house, no mention being made of such right either by Balfour or Stair, nor any decision finding her entitled to it; *2dly*, That at all events there was no room for such a claim here; it being plain, from Sir Samuel having built the new house within a few yards of the old one, that he must have intended either to have taken it down, or to have converted it into offices.

The question first came before the Sheriff of Kirkcudbright, who having found that "Lady Hannay had no claim upon either of the houses," she complained of the judgment by bill of advocation.

The Lord Ordinary on the bills took the case to report.

The Court went on the specialty stated by the common agent, on which they were clear that Lady Hannay's claim was groundless. Some of the judges, how-

No. 46.

No. 47.

Where there are two mansion houses on an estate, has the widow a right to the second, as an appendage of her terce?

No. 47. ever, expressed great doubts whether, even independent of the specialty, it had any foundation in law.

The Lords unanimously refused the bill.

Lord Ordinary, *Stonefield.* Act. *Maitland.* Alt. *Arch. Campbell, jun.* Clerk, *Menzies.*  
*R. D.* *Fac. Coll. No. 204. p. 487.*

No. 48. 1797. *January 20.* ROSS *against* AGLIANBY.

A widow having accepted a conventional provision out of landed property in England, found not entitled to claim a terce out of her husband's lands in Scotland.  
*Fac. Coll.*

\* \* \* This case is No. 120. p. 4631. *voce* FOREIGN.

1798. *June 13.*

JOHN MAKGILL and his CURATOR AD LITEM, *against* MRS. AGNES LAW, and Others.

No. 49.

Where an entail excluded the terce, and prohibited the heir in possession from giving a higher annuity from the estate to his widow than one fourth of the free rent of it, or to give larger provisions to younger children than three years free rent of it, it was found that a widow could not claim the terce; and an heritable bond granted to her by her husband, and provisions to younger children, above what were allowed by the entail, were restricted in terms of it, though it was not recorded.

*Fac. Coll.*

\* \* \* This case is No. 62. p. 15451. *voce* TAILZIE.

1805. *March 7.* BOYD *against* HAMILTON.

No. 50.

The widow's terce is a preferable burden upon the lands, even in the hands of a singular successor, affecting his right from the date of the purchase.

Spencer Boyd having succeeded to his brother James, as proprietor of the estate of Penkill, sold part of the lands to Hugh Hamilton of Pirnmore, in November, 1801.

On searching the records, an inhibition on a dependence was discovered, at the instance of Elizabeth Boyd, residing in America, widow of James Boyd of Penkill, dated 23d August, 1792.

Upon this, Mr. Hamilton consigned a third part of the price, till he should be relieved of any demands on account of this claim of terce.

On investigation, it was found, that the summons on which this step of diligence was taken had never been called in Court.