

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.