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. *Fountainhall, 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 tercer cannot dispose of a *silva cædua*, but that the fiar may dispose thereof even during her right. 2*do*, 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

* *See* Appendix.

'bruiked and enjoyed during all the days of her life.' The Duke of Douglas having succeeded to the fee of these lands, confirmed by deed of ratification all her liferent rights, and among others, her right to the liferent of the woods. No 12.

In virtue of this right, the Countess was in use to dispose of the natural woods upon the liferented lands, by selling them in haggs, or years cuttings. In the year 1740, she entered into a contract with Lang and Cross, two wood-cutters; by which she sold them one hagg, called the *south wood*, then 18 years old, which they were to cut down and clear away in 14 months; and she received the price agreed upon.

After the elapse of an year, when about three-fourth parts of the wood was cut down, the Countess died; upon which the Duke interrupted and stopt the wood-cutters from cutting down the remainder.

The wood-cutters sued both the Duke and Executors of the Countess for damages.

Pleaded for the Duke; That, by the law of Scotland, a liferenter has no right to cut down and dispose of woods; see act 1491, James IV. Parl. 3. cap. 25.; also act 1535, James V. Parl. 4. cap. 15. Upon these acts, Sir George Mackenzie observes, that a liferentress has only right to as much of the coals or trees as are necessary for her own use. Sir Thomas Craig, lib. 2. dieg. 8. § 17. & 18. lays down this as an express principle of our law; and he mentions a case in point. The same was found in the case of the Duke of Hamilton against the Duchess, 25th January 1722;* where it was also found, that the fiar might, notwithstanding of the liferent right, cut and dispose of the woods, by sale, or otherwise; nor was it regarded, that, in like manner, as in the present case, the Duchess was provided in the liferent of the woods; for this was construed to mean no more, than such part of the wood as was necessary for the uses of the barony. If, then, this be the law, the Duke's ratification gave the Countess no new right. By consequence, the Duke, if he pleases, has right to make the Executors of the Countess accountable for the whole wood disposed of by her. But the Duke did not insist upon any of these arguments, farther than to save such parts of the wood as remained standing at the Countess's death. As to these, he contended, that, at this period, her right, whatever it was, did undoubtedly determine: For even supposing the woods to be natural fruits in the possession of the liferentress, yet such of them as remained standing at her death were *pars soli*, and must belong to the heir.

Answered for the Executors of the Countess; That from the principles of law in general, all fruits and profits that can be reaped, *salva rei substantia*, may be lawfully taken by a liferenter. A *silva cædua* plainly falls under this description. But without entering into that disquisition, the Countess's liferent rights, ratified by the Duke, gave her a title to dispose of the woods. Upon this footing, with regard to the determination of her right, argued, That as she had sold the wood, and received the price, and as the purchasers had cut down almost three-fourths of it, and might have cut down the whole long before her

* Examine General List of Names.

No 12.

death, these circumstances ought, as to her, to infer a *perceptio*, or *separatio a solo*; and this the more especially, that the Duke was in the knowledge of the bargain, and saw the execution of it carried on for a above a year, without objecting.

In this case, it appeard, that the Countess had been rather premature in disposing of this wood; for, in a proof allowed by the Lord Ordinary, it came out, that the common age in that country for cutting woods was from 20 to 30 years; whereas she had sold it at the age of 18 years. But the Court did not seem to lay any stress upon this circumstance; and several of the Lords gave their opinion, that the liferentress had no right at all to dispose of the woods; and therefore that no action could lie against the Duke. But as the question concerned only such part of the woods as remained standing at the Countess's death, there was no interlocutor on the general point.

'The Lords sustained the defence for the Duke, and assoilzied him; but found the Executors of the Countess liable to the pursuers in damages, with interest thereon, from the term of Martinmas, after the interruption by his Grace; and found expences due.'

For the Duke, *A. Pringle.* For the Executors, *Ja. Erskine.* Clerk, *Kirkpatrick.*

S. *Fac. Col. No 49. p. 72.*

1766. *January 14.*

Alexander Pirie, Factor *loco tutoris* to James Justice, *against* Mrs Margaret Murray, and her Tenants.

No 13.

Tacks granted by a person, whose liferent infeftment was limited to a certain sum, found good, notwithstanding the lands yielded a greater rent than the sum to which the right was restricted.

In a contract of marriage entered into between Mr James Justice and Mrs Margaret Murray, Sir James, the father of Mr Justice, became bound to resign the Mains of East Crichton, and certain other lands therein mentioned, in favour of Mrs Margaret Murray in liferent, and warranted these lands to be worth 2000 merks of yearly rent. In this contract there was also a procuratory of resignation, providing, that the lands over which Mrs Murray's liferent was constituted, should be resigned in her favour for new infeftment, so far as the same extended to her liferent annuity of L. 100 Sterling. And it was also provided, that she should enjoy the full mails, profits, and duties of the same, in so far as might be extended to the foresaid sum of L. 100 Sterling. The contract contained likewise a clause of warrandice, whereby the lands were warranted free of all burdens whatsoever, in so far allenarly as might be extended to her yearly liferent above mentioned; and she was likewise assigned to the rents of the same, in so far as might be extended to her liferent of L. 100 Sterling. This contract likewise concludes with a precept of sasine precisely in the same terms, and expressly restricting her right to L. 100 Sterling.

Some time after the marriage which followed upon this contract, the estate of Crichton was sold, with the concurrence of Mrs Murray, and the lands of Justice-hall were purchased. The disposition to these lands provided, that they should