

No 22.

both on the same footing ; therefore, what holds in the one must likewise take place in the other. Besides, our law has proceeded on the supposition, that woods, in the same manner as coals, are *pars fundi* ; and that the liferenters, of whatever kind, can no more cut the growing wood, or make use of the coal for sale, than they could destroy the surface of the ground, which might render it useless for many years.

THE LORDS found, that a liferenter, though by reservation, has not a right to cut woods.

But, upon petition and answers,

They found, that Auchinblain, who is liferenter, by reservation, has a right to cut the woods in question, according to the custom and usage of the country where the woods are.

Fol. Dic. v. 1. p. 549. C. Home, No. 73. p. 123.

1794. February 26.

FRASER against MIDDLETON.

No 23.

THE LORDS found, That a father, after disposing his estate to his son in his contract of marriage, reserving to himself a liferent of one half of it, has no power of granting leases of the part liferented by himself to last beyond his own lifetime.

Fol. Dic. v. 3. p. 387. Fac. Coll.

* * * This case is No. 75. p. 7849. *voce* JUS TERIII.

SECTION III.

Power of uplifting liferented Sums.

No 24.

Found, that a liferenter, who called up the money, was bound to re-employ it conform to the bond.

1661. July.

FLEMING against FLEMINGS.

MALCOLM FLEMING, merchant in Edinburgh, dies, leaving behind him a wife named Fleming, and many children ; she obtains herself confirmed executrix-dative to her husband, and tutrix-dative to her children ; and, thereafter, she marries Sir John Gibson, Clerk of Session ; betwixt whom and the children there being a count and reckoning depending before the English Judges for the time, for the bairns part of the defunct's moveables ; there was