

No 39. rent have no further claim from the heir than *in quantum esset lucratus*. Others said, this was entailing a law-suit.

Upon the first of March 1755, the LORDS found, "That neither Mr Scot, nor Mrs Phœbe Forbes, are obliged to repair the roof of the house in question; but that she is entitled to repair the same, and that the said reparation, if made, ought to be at the sight of the Sheriff of Forfar, or his Substitute, at whose sight also the account of expenses of said reparation is to be made up; and found, that, at the issue of the liferent, Mr Scot is liable to repay to the heirs of the liferentrix the whole expenses of the said reparation, conform to the accounts to be made up; but, as to the expenses of process, adhered to the former interlocutor."

And, upon a reclaiming petition by Mr Scot, praying for an explication of some things in this interlocutor,

"Found, that the expense of repairs must not exceed eighty pounds Sterling; and that the liferentrix must find caution immediately with respect to the gardens and inclosures, as also with regard to the house, after the repairs are made, in the words of the act of Parliament, and modify the account of expenses given in to £. 24: 10s. Sterling, and decern; and also decern for the expenses of extracting the decret."

Act. Lockhart.

Alt. Wedderburn.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 386. Fac. Col. No 148. p. 220.

1755. August 7.

Major THOMAS COCHRAN, and Others, Trustees appointed by the deceased CHARLES COCHRAN, Esq; of Culross, *against* Major-General JAMES COCHRAN.

No 40.  
A person getting the liferent of a house, and of the furniture thereof, must use the furniture in that house only.

CHARLES COCHRAN of Culross, by a disposition, to take effect after his death, vested his estate, heritable and moveable, in certain trustees for uses; and, by the same deed, he gave the liferent of the house of Culross, and household furniture, gardens, and inclosures, to his brother Major-General James Cochran; who, after the death of Charles, attained the possession of these subjects.

The Trustees brought an action against the General, for having it found, *1st*, That he could only use the household furniture in the house of Culross. *2dly*, That some very fine table-linen, of Dutch damask, cut and shaped in 1663, but never sewed, nor used, did not fall under the liferent grant of household furniture; and, therefore, that the General ought instantly to restore them to the Trustees.

It was *plcaded* for the defender, against the *first* conclusion of the libel; That, as he had got right to the liferent of the furniture in the house of Culross,

without any restriction as to the place where he was to use the furniture, he might use it where he pleased, and could be no further restrained than the nature of all liferents restrains the liferenter, viz. to the use *salva rei substantia*; and although the furniture is in the deed described to be the furniture in the house of Culross, yet that was only demonstrative of what furniture was given, but not taxative, so as to confine the defender to use the furniture only in the house of Culross. Liferent rights of furniture are very common, and are often granted in favour of wives in their contracts of marriage, or by other deeds; and yet it was never pretended that the liferenters could only use that furniture in the house by which it happened to be described in the deed, and that they could not transport the bed and table-linen, or other furniture, to any house in town or country, where they might happen to reside; were liferent rights to be constructed as the pursuers would have them, they would often be of very little use to the liferenters.

Against the *second* conclusion of the libel, it was *pleaded*; 1st, That table-linen are undoubtedly household furniture, and therefore it was not necessary to inquire what was the proprietor's intention; such inquiry is only necessary, when it is doubtful whether the thing falls under the description of household furniture or not. *L. 32. § 2. D. De auro, argento, &c. legat. Argentum, pectoris, vel escario legato, in his quæ dubium est cujus generis sint, consuetudinem patris-familias spectandam; non etiam in his quæ certum est ejus generis non esse.* 2dly, That the intention of the proprietor to make the damask household furniture sufficiently appeared from his cutting it into table-napkins and table-cloths; and therefore they fell under the liferent-grant of the furniture.

It was *answered* for the pursuers, in support of the *first* conclusion of the libel; That where the liferent of a house, and of the furniture in that house, is granted to one, it is implied in the grant, that the liferenter is only to use the furniture when he resides in that house; and were it otherwise, the right of the fiar would be of very little value; for furniture is usually adapted to the place where it is put up, but if moved from place to place, must be very soon destroyed.

In support of the *second* conclusion of the libel, it was *answered*; That it depends much upon the will of the proprietor, whether a thing is to be reckoned household furniture or not, as it is observed by Voet. *ad tit. D. De supellect. legat. No 3.* And as the table-linen were never used, nor so much as sewed, so as to be fit for using, they cannot be considered as household furniture, as appears from the definition thereof, *L. 7. § 1. D. De supellect. legat. Instrumentum quoddam patriis familiæ rerum ad quotidianum usum paratum.*

THE LORDS found, that the defender could not carry away any of the household furniture out of the house of Culross, or use it any where else but in that house; and found, as to the linen cut, but not sewed, and which were kept for so many years backwards in the family for a curiosity, without being made use

No 40. of as furniture, that the defender had no right to use them any other way than as they had been formerly used.

Reporter, *Shewalton*.

Act. *And. Pringle et Sir John Stewart*.

Alt. *Ro. Bruce*.

Clerk, *Gibson*.

*Fol. Dic. v. 3. p. 386. Fac. Col. No 162. p. 242.*

1801. December 1. ROLLO against IRVING and Others.

No 14.

An extraordinary dividend or *bonus* given by a bank belongs to the liferenter of the stock.

IN June 1794, Alexander Houston executed a deed, by which he vested his heritable and moveable estate in the hands of trustees. His conveyance included, among other subjects, 144 shares of the stock of the Bank of Scotland. It provided a liferent to Mrs Houstoun, in these terms: "That my whole heritable and moveable means and estate, generally and particularly herein disposed in trust, shall be, and are hereby burdened with the liferent-right to Mrs Margaret Rollo *alias* Houstoun, my spouse, during all the days of her life, in case she shall survive me; immediately on my decease, to get the shares of the Bank of Scotland, presently standing in my name, transferred in her own name in liferent; and to appoint factors from time to time to receive the dividends then due, or becoming due thereon, and the rents, annual-rents, and profits arising from my other means and effects, both heritable and moveable, hereby disposed in trust, without the consent or interference of my trustees," &c. Upon the death of Mr Houstoun in 1798, the bank stock was accordingly transferred to the widow in liferent, and his trustees in fee; and she received from time to time the ordinary dividends.

Previous to Mr Houstoun's death, an addition had been made to the capital of the bank, and he had subscribed for a number of shares of the additional stock, which were to be paid by instalments; he directed his trustees to pay these instalments, by selling stock in the 3 *per cents.*, of which he had a considerable sum. But it was judged more expedient, both by the trustees and the liferentrix, to allow the calls for the bank-stock to run in arrear, as the Bank were in use of accommodating proprietors in this way, upon their paying interest, to be deducted from their dividends.

At a general meeting of the proprietors of the Bank, on the 26th March 1799, it was ordered, "That an extraordinary dividend or *bonus* be given to the proprietors holding stock, upon the 1st June next, by transferring to them part of the Bank's interest in the 5 *per cents.* 1797, at the rate of L. 5 of the 5 *per cents.* for each share of the Bank of Scotland's stock; or, in the option of the proprietor, that the Bank shall, in lieu thereof, pay to him the selling price of the said 5 *per cents.*, as *per* Lloyd's list, the first transfer day after the 1st of June, at the Bank's office in Edinburgh; and that a sum equal to the *bonus* to be ascertained as above, falling to such proprietors as are in arrear