

situated within the bailiary of Cuninghame and county of Ayr, a description which applied to the parish of Dalry, but could not well apply to the right of patronage, which, being a right incorporeal, could not be said to lie in any bailliwick.

The Lords altered their interlocutor, and found that Hamilton Blair had right to the teinds of the pursuers' lands as titular.

TERCE.

1776. *February 17.* The RELICT of JOHN CAMPBELL *against* GABRIEL CAMPBELL.

THE husband's sasine, says Mr Erskine, *B. 2, tit. 9, § 46*, is the measure of the wife's terce: thus, neither an heritable bond, nor a disposition of lands granted by the husband, if death has prevented him from giving sasine to the creditor or disponee, can hurt the terce; and so the Lords found, "In respect that the deceased John Campbell was not, at the time of his death, denuded of the subject within mentioned by infertment, but only by a title which remained personal; therefore find, that Katharine Waddell, his relict, is entitled to a terce of said subjects, and not to a third part of the price thereof."

See HERITABLE AND MOVEABLE, and JUS MARITI.

THIRLAGE.

1776. *June 25.* SCOTT of BAVELAW *against* CALDERWOOD of POLTON.

THE tenants of Buteland were, by their tacks, thirled to the mill of Bavelaw: this had been the case for a very long period *successive*.

The proprietor of Bavelaw sold the lands of Buteland to Calderwood, with absolute warrandice against all burdens, &c. in common style, but without mention of thirlage, further than assigning to the tacks in which it was contained. In an action against the purchaser and his tenants, for abstracted multures, the Lords found that the thirlage took place during the currency of the present tacks, but assoilyed *quoad ultra*.