

No 44.

for a third thereof, to a terce of some lands which she liferents.—It was *alleged*, That seeing she is provided to a liferent of the hail, she cannot both enjoy the liferent, and also have a third of what she liferents.—It was *answered*, That the contract doth not exclude her from a third of the moveables, which the law doth provide her to ; and the contract providing her to a liferent, doth not say, that it is in contentation of all third. And though a wife be by contract appointed a liferenter of lands, it will not exclude her from a terce of such lands whereof she is not liferenter.—*Replied*, That she being provided to a liferent, it imports as much as that she should acquiesce with her liferent, without claiming interest to the property of that which she liferents ; or else, if she will have a third, she must renounce her liferent, as has been ordinarily found in moveable bonds containing sums of money provided to the man and wife in liferent.

Which the LORDS found also in this case, conform to the preceding practices.

*Gilmour, No 117, p. 86.*

No 45.

1666. July 26.

MENZIES *against* BURNETS.

IN the case *Menzies contra Burnets*, it was found, that a relict being provided to a liferent of all the goods belonging to her husband, ought to sell and make money of the horse, oxen, and such goods as may perish, to the effect she may liferent the money and make the sum forthcoming after her decease ; but *cum temperamento*, that a competent time should be allowed to that effect ; and if the goods should perish in the meantime, she should not be liable for the same. In that same case it was found, that a relict should not have both a liferent and third, but should have her choice or option of either. Some of us were of the opinion, that seeing it appeared by the contract, that the goods were not to be in communion, but that she was to have a liferent of the same, she had not a choice to have a third or liferent.

Reporter, Lord Lic.

Clerk, Hay.

*Fol. Dic. v. 1. p. 434. Dirleton, No 33. p. 14.*

No 46.

1677. February 2.

HOLMES *against* MARSHALL.

THE LORDS found, That a woman, being provided by her contract of marriage to a liferent of the conquest of lands, or other goods that should be acquired during the marriage, and the question being of moveables, and she having accepted a third of the same, she could not return to crave a liferent of the other two parts, though it was *alleged* by her, she had not accepted the same.