

No. 26.

The Lords found that Mr. Patrick could not clothe himself with the tercer's right, to cause the legal expire, but found the offer relevant; for, besides the favour of the cause, the case is not alike with an apparent heir, whose right, though not declared, yet he continues in his predecessor's possession, and none other hath any interest; but the fiar might possess the whole, and exclude the tercer till she were served.

Stair, v. 1. p. 417.

1667. February 9. MONCRIEF *against* TENANTS of NEWTON.

No. 27.

The relict by her terce has no right to the teinds, unless where there is an infestment of the teinds by erection; and therefore in a pursuit against a tenant who paid a duty jointly for stock and teind, a fourth part was deducted as the worth of the teinds, and the relict got the third of the remainder.

In the same case, alleged, That as the manor-place belonged to the fiar without division, so behoved the close, orchards, yards, &c. The Lords, in respect nothing was alleged or instructed that there was a tower, fortalice, or manor-place having a garden or orchard for pleasure rather than profit, found no necessity to decide what interest a tercer would have in such; but these being let by appearance as grass-yards, they repelled the allegiance, and found the tercer entitled to a third part of the rent paid upon that account.

Fol. Dic. v. 2. p. 450.

* * This case is No. 129. p. 15733. *voce* TEINDS.

1675. February 2.

BARCLAY *against* SCOT.

No. 28.

A terce was found no sufficient title to defend against removing upon apprising against the husband's heir.

John Barclay being infest in the Barony of Cullernie, upon an apprising, pursues the tenants to remove. Compearance is made for Dame Marion Scot, who alleged that she had right to a terce of this Barony, as having been relict of the deceased Laird of Cullernie, and so having right with the pursuer *pro indiviso*, she will not suffer the tenants to remove. It was answered, That she produces no interest, unless her terce were kened.

The Lords repelled the allegiance, and decerned, reserving her right of terce as accords, and found that she could not make use thereof till it were kened.

Stair, v. 2. p. 315.

* * Dirleton reports this case :

A removing being pursued from some lands of the estate of Cullernie, the Lady Cullernie compeared, and alleged, that the tenant could not be removed without her consent, seeing she had right to a terce by the law, and was not excluded by her contract of marriage, though she was provided thereby to a jointure, but not in satisfaction of her terce, or what else she could pretend. Whereunto it was answered, That she was not served nor kened to a terce, and until then, she had no interest to compear to stop the removing.

The Lords repelled the defence, and found she had no interest ; reserving her right of terce, when she should be served and kened, as accords.

Reporter, *Craigie*.

Dirleton, No. 234. p. 112.

No 28.

1681. *November 23.* LADY CRAIGLEITH *against* LADY PRESTONGRANGE.

No. 29.

The Lady Craigleith having pursued her daughter and her husband Prestongrange, for a third and terce besides her jointure, in respect she had not renounced them ;

Alleged for the defenders : As a wife's provision, exceeding her legal third, is not to be reduced thereto, she ought not to have any more.

Answered : A conventional takes not off the legal provision, unless renounced ; which is also Craig's opinion.

The Lords delayed to give interlocutor, till they saw if the Parliament in June would make any statute anent terces, and at length decerned in favours of the Lady, and allowed her a terce out of what was not life-rented.

Harcarse, No. 666. p. 190.

1697. *February 9.* CREDITORS of BALQUHOLLY *against* The LADY.

No. 30.

A Lady's jointure being reduced by a creditor, who had inhibited before her contract of marriage, and she thereafter claiming a terce, as if she had not been provided at all ; this the Lords refused, because that having once founded on her contract, and renounced all terce, &c. she could not afterwards recur thereto.

Fol. Dic. v. 2. p. 451.

* * This case is No. 44. p. 6395. *voce* IMPLIED CONDITION.