

1696. July 3.

LADY BORTHWICK, Supplicant.

THE LORDS having advised the probaton of the roup of the Lordship of Borthwick, in the process of sale, pursued by the creditors, and found the estate bankrupt; the Lady gave in a bill, craving the sale might not prejudge her jointure, which was so declared; 2do, She *alleged*, That she ought to have the faculty and power of cutting as much of the timber and woods growing on her life-rented lands, as would repair and uphold the houses on the ground. To which it was *answered*, That her infestment not bearing the woods, but allenarly the lands, and it not being *a sylva cædua*, which uses to be cut by hagg, and for profit, she ought to have no such liberty, else the fiar's planting might be destroyed by liferenters, who, by the acts of Parliament, are obliged to preserve the planting and policy about houses; and *ususfructus* is always understood *salva rei substantia*. Some of the Lords argued, that she might use it as her husband did before, *et tanquam bonus et frugi paterfamilias* without wasting, only for the necessary use of the ground, even as a relict will get as many coals out of a going heugh, in her liferent lands, as may serve the use of her family; and Craig tells it was so decided, both in the case of woods and coal-heughs, *lib. 2. Feudor. tit. 8.* THE LORDS, considering this planting was valued to L.2500 Scots, and if the Lady were permitted, under the pretence of reparations, to dispose of it, it would not only diminish the price, but discourage buyers, and that she had no specific infestment on the wood, and that her husband's right was *a jus pinguius domini* more than what a conjunct fiar could claim; therefore found she had no right to cut any part of the woods, though to the use of the ground, but she and the tenants ought to uphold them upon their own expenses. This seems to debord from the ancient decisions; but then lands were not sold by roup, to which this privilege of widows might be a great discouragement and let.

Fol. Dic. v. 1. p. 548. Fountainhall, v. 1. p. 726.

1700. January 25.

The Marquis of DOUGLAS against The Countess of SUTHERLAND

THE Marquis of Douglas pursues a declarator against the Countess of Sutherland, that though she be liferenter of the barony of Preston and Bunckle in the Merse, by virtue of her contract of marriage with the Earl of Angus, his father, yet the jurisdiction and right of regality belongs to him as fiar, and that she may be discharged to exercise the same, by constituting a Bailie of regality, or to judge any farther than to give decreets against the tenants to pay their farms to her. *Alleged* for the Countess, She opponed her contract and charter, whereby the lands, lordship, barony and regality of Bunckle is expressly disposed to her, comprehending the particular lands therein mentioned, which gave her a clear right to the jurisdiction and exercise of the right of regality,

VOL. XX.

46 A

No 10.

A liferentrix, when the estate was going to be sold, craved power to cut as much wood as would repair the houses.—Refused.

No 11.

Lands erected into a barony being liferented by a lady as her jointure, it was found that she had right to the jurisdiction of regality within the bounds of her liferent lands.