

1676. *July.*

ANENT LIFERENTS.

QUERITUR,—At how much the liferent of one can be valued, who is in actual service against an enemy, or is engaged either in the defending or storming of a town. Sure it cannot be estimated at much; for *qui utitur periculis peribit in illis*, says the wise man, in *Ecclesiasticus, cap. 3, verse 27*; see Craig, Feud. pag. 331, where you have four or five sundry instances of valuing things.

A woman's liferent who is bearing children is reputed less valuable than hers who is not in that hazard, though she be much older. Five, six, or seven years purchase are the ordinary steps and degrees by custom condescended upon, for buying liferents.

Advocates' MS. No. 492, § 2, folio 257.

1676. *July.* ANENT THE LORDS OF SESSION VOTING IN THE ACTIONS OF THEIR RELATIONS, &c.

THE Roman Law, *in lege ultima, in fine, C. de Assessoribus*, discharges *ne quis iudex vel assessor sit in ea causa in qua advocanda patrocinium mutuavit, ob præsumptam affectionem*: which, though very rational, yet, to our regret, is not observed with us; for our law puts so entire a confidence in the honesty and integrity of the Lords of Session, that, by 212 act in 1594, it allows no grounds of declinator against these senators, unless they be father, brother, or son; and in *Sir William Bennet of Grubbet's* case against *Moor of Otterburne, in December, 1671, supra, num. 283*, they would not extend it to the King's Advocate, his brother-in-law; see M'Kenzie's Observations on the Act of Parliament 1621, p. 66; and therefore it will not hinder, nor can he be declined on this account, that he was one of the parties' advocates in that cause which is to be judged; yea, farther, in *my Lord Dumfermling's* action against *the Earl of Calendar*, which see *supra, num. 480*, Sir D. Falconer, Lord Newton, being advanced to be a Lord of the Session, voted in that cause, notwithstanding, by a declinator given in against him, he was entreated to decline himself, not only in regard he had been one of Dumfermling's advocates, but farther, (which seemed strong,) because *prodiderat et præcipitaverat iudicium et suffragium suum*: in so far as the Lords having appointed that cause to be a part of his trial, by resuming the hail debate, and giving his own opinion on it first in their presence, conform to the model of trial appointed in June and July 1674; he did so, and concluded with his positive judgment in favours of my Lord Dumfermling, which the Lords repelled, referring it to his own discretion; who chose to vote, though it had been less suspicious for him to have forborne. See Anton. Mornajus, in *Observationibus ad dictam Legem ult. C. de Assessoribus*.

Advocates' MS. No. 492, § 3, folio 257.