No 5.

THE LORDS found that the benefit of the mill belonged to the liferenter as to the multures of all that was ground without the thirlage; but found it not to extend to lands of the defunct's which he had thirled to the mill.

Stair, *v.* 1. *p.* 358.

1676. *July* 14.

The PROCURATOR-FISCAL of the Regality of HAMILTON *against* LAWRIE.

No 6.
Liferenters were found liable to keep head courts of regality, and not the fiars.

THE Procurator-Fiscal of the regality of Hamilton charges William Lawrie liferenter of Blackwood, and his son the fiar thereof, for amerciaments for absence at the Michaelmas courts, at L. 50 for each absence of both; which L. 50 they suspend on these reasons, 1*mo*, That by their infeftments they are not obliged to keep any high courts, but have their lands *cum curiis*; 2*do*, There is no fixed diets of the high courts, and therefore they are not obliged to keep them without citations; 3*tio*, By their ancient infeftments, they are obliged to keep the courts at Lesmahago, being a cell of the Abbacy of Melrose, within which these lands lie; 4*to*, Both liferenter and fiar cannot be obliged for two suits for the same land; 5*to*, The amerciament is exorbitant, and the Lords have been accustomed to modify the same. It was *answered* for the charger, That the suspenders infeftment being ward, they are liable for suit and service by the nature of their right, which the LORDS found relevant. To the *second* and *third*, it was offered to be proven, that the diets were fixed, and that it was as convenient for them to keep them at Hamilton as Lesmahago.

Which the LORDS found relevant, but found the liferenter only liable for the suit, and modified the same to L. 20 for each absence.

Stair, *v.* 2. *p.* 450.

1677. *July* 13. The Lady PRESTON *against* The Laird of PRESTON.

No 7.
A liferenter found to have no right to the coal in her liferent lands. See No 4.

THE deceased Lord Preston, by his contract with ——— Bothwel his second wife, having provided her to an annualrent of 1200 merks out of his lands, and for security thereof, obliged him to infeft her in the lands, declaring it to be in her option, to take her to the annualrent, or to possess the lands themselves, she chuses the possession of the lands, and insists for the benefit of a a going coal-pit in the lands at the time of the contract, and now as being part and pertinent of the lands, and thereby carried, though not not expressed, as vassals being infeft in lands, though the superior remains infeft *in directo dominio*, yet he hath thereby no right to coals in the lands, but the vassal hath right thereto, as part and pertinent, which must also hold between the liferenter infeft in the lands in liferent and the fiar. It was *answered* for the fiar, That there was no parity in these cases; because liferents, however conceived, are

but *ususfructus*, and are not extended to green woods or coals. It was *replied*, That liferents have been extended unto coals sufficient for the liferenter's use, or woods to the reparation of houses. It was *duplied*, That whatever might be pretended in liferent by conjunct-fee, whereby the liferenters may receive vassals, and where the fiar hath been in use to raise coal for his own fire, and to make use of wood for his own and his tenants use, that the conjunct fiar might continue the same custom, yet this is but a simple liferent, and the coal before the infeftment was accustomed to be farmed, and sold to the country, or if there had been *sylva cædua* accustomed to be hained and sold to the country, the liferenter can pretend no right. No 7.

THE LORDS found the liferenter to have no right to this coal which was a going coal sold to the country before the contract, much less, if it had been a coal begun to be win after the contract.

Fol. Dic. v. 1. *p.* 548. *Stair, v.* 2. *p.* 540.

*** Gosford reports this case:

IN an action of declarator at the instance of the Lady against her son-in-law, the Laird of Preston, to hear and see it found, that she being provided by contract of marriage with the defender's father, to an annualrent of 1200 merks out of the lands, with power to enter to the possession of the lands, if she pleased, rather than to take up the said annualrent; and accordingly, she having made her election, and entered to the possession of these lands, wherein there was a going coal the time of the contract; that, therefore, she had right to 400 loads of the coals for the bygones, and in time coming; or otherwise, that she would work the said coal, and take so many loads for her own use. It was *alleged* for the defender, That the contract of marriage could be no title for this declarator, because there was no provision to the coal in her favour but only to the annualrent out of the lands. It was *replied*, That she not only having right to the annualrent, but likewise to enter in the possession of the lands for the annualrent, and having accordingly made her election and entered to the possession, by our law she had an undoubted right, as is clear by Craig, page 189, where he asserts, that all terces are found by a decision to have right to coal, and declares his opinion, that conjunct fiars have right to so much of the coal lying within the lands as may serve to their private use, as they have in *sylvis cæduis*. THE LORDS having considered the contract of marriage, and found that the Lady had no conjunct-fee of lands, but was only provided to an annualrent out of the lands; and, that it was in her power only to enter to the possession for security of the annualrent; that, therefore, she could crave no right to any part of the coal, as not being conjunct fiar nor infeft the lands; and so decerned.

Gosford, MS. No 999. *p.* 101.