

No. 40. sonal, have no title to insist on his taking payment of these from any other subjects.

The judgment of the Court was, "Find, that Mrs. Belschier's terce does not affect the rents or profits of the coal, but only those of the lands and teinds in which her husband died infest. Find, That Thomson, as well as any other real creditor, annual-renter, or annuitant, whose debts and annuities did really affect the estate, both land and coal, at the time of Mr. Belschier's death, must take such annual-rents and annuities proportionally from both, and cannot lay the whole upon any particular subject, leaving out the other, in prejudice either of the terce or posterior creditors; and, further, that their principal sums cannot be brought *in computo*, so as to hurt or diminish the terce; therefore find the widow's terce to be one third part of the free rent of lands and teinds, after deduction of the above proportions of the interest of the real debts and annuities, if any be, affecting the same; and that such terce commenced and took place for the term's rent that became due at the next Whitsunday or Martinmas after the husband's death."

*Note.* By this judgment, the Court found, that the teinds of the lands were subject to the terce, though this point was not argued by the parties, but only suggested by the Court at the time of deciding the cause.

Lord Ordinary, *Kames.* Act. *Swinton.* Alt. *Elphinstone.* Clerk, *Campbell.*

*Fac. Coll. No. 83. p. 159.*

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1783. July 29.

DOUGLAS HERON and COMPANY, *against* MARY CANT.

No. 41.

The delivery, *sine arbitris*, of a bond of provision, by a husband to his wife, found not to preclude her from claiming her legal provision of terce.

*Fac. Coll.*

\* \* \* This case is No. 139. p. 11461. *voce* PRESUMPTION.

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1788. July 10. JAMES MACCULLOCH *against* AGNES MAITLAND.

No. 42.  
Not excluded by a disposition from the husband, followed with actual possession of the lands, but not with infestment.

Hugh Macculloch sold his lands of Grange, and the purchaser entered into possession, but did not take infestment. After Hugh Macculloch's death, his widow, Agnes Maitland, insisted to be kened to her terce. James Macculloch, the eldest son, objected; and

Pleaded: Even at a time when feudal ideas were much more prevalent than at present, some of our most eminent lawyers were of opinion, that where a husband had sold his lands, his widow, after his death, could not claim a terce. The consequence of this would be, to disappoint the purchaser, without benefiting her, as