

of these Term Days, intitles his Executors to the Half or Whole of the Rent & Dutys of that Year accordingly. And in the Case of the Executors of Dr. Grahame in Perth, it was found that where a Liferenter dies after sowing on the Term Day, his Executors have Right to the Liferent Dutys for that Term: Quia in favorabilibus interpretatio est in rebus, and the Law makes no fraction.

Sir James Stewart (Jud. Tit. Liferenter) says, that the easiest way for all these Questions would be, to compute a Liferent de die in diem, and to give a Liferenter the Year's Duty in whole or in Part, as it falls after his Entry whenever the same may happen. But this wants Law to establish it. And on the contrary, an Annuelrent pay'd out of her jointure Lands, at two Terms of the Year Whitsunday & Martinmas by equal Portions, yearly termly and proportionably during her Lifetime; was found due only for the last Term preceding her Death, and no Proportion thereof due from that Term till the Day of her Death, which happened about 4 Months after 22 Feb. 1711. Laurie contra Maxwell.

If Liferenters labour the Lands themselves, their Executors have Right to the Rent of the Year wherein their Death happens, whatever Time of the Year the Ground is laboured and begun to be sown; Whitlaw's Notes fol. 110. A Liferenter was found to have Right to the Crop of Lands laboured by her without paying any Rent for it, albeit she died in April, 25 July 1671. Guthrie contra L. McKenston. Tho perhaps it were reasonable to allow them no more in this than in other Cases, except the Expenses of labour.

Albeit Rent of a Mill Liferented, whether possessed by the Liferenter or by Tenants, will be divided according to the legal Terms of the Year, the Emoluments of the Mill when possessed by the Liferenter, will be reckoned de die in diem upon the Liferenter's Decease, Stewart Jud. Tit. Mill.

When Lands are set for Third and Tith, so that the Master is not to be paid by the Hand of the Tenant or by the Product of the Corns when they are reaped and threshed, but has an Interest, as the Tenant himself in the Corn and Body of the same; if the Master die before Separation, or after Separation before Martinmas: His thought his Executors will have Right to the Third and Tith intirely; for it is like on every Crop, and the Tenant is understood to have sown for the Master and himself, Stewart Jud. Tit. Third and Tith.

Tit. 4.

The several Kinds of Liferents.

Liferents are either legal or conventional, that is acquired by Law or Pact.

The legal Provisions are more equal and proportionable, than ordinary conventional Provisions in Contracts of Marriage. For a Man in ardor amoris transported by Affection is often moued to ruin his Estate and beggar his Children by fond and extravagant Grants to the future Spouse; and sometimes a Wife's mean Provision in her Contract, adapted to the Husband's narrow Circumstances at the Time, is not afterwards enlarged when the World minds with them: Whereas the Provisions of Law are rational, making Wives to share of their Husband's Industry and Fortune; by giving them more or less according to the Increase or Decrease of the Estate, which encourages them to look over and manage it with the more concern.

Sect. 1.

Liferents acquired by Law.

As in the Roman Law, there is a Succession called *ince vir et uxoris*: So we have Liferents by Law, that is which Law creates to the Surviver of married Persons out of the Estate of the deceased, viz. Terce, and Courtsey.

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of Terce.

Terce (in Latin *tertia*) is a Relict's Right to the Liferent of a third of Lands, Tithes, Wadsets and Annuelrents, in the Fee whereof her Husband died intestate: Arising from that natural Obligation upon Husbans to provide for their Wives Craig Feud. Lib. 2. Tit. 22. §. 9. §. 16. pr. et vers. debetur autem triens. Which answers to the Dower of the common Law in England. Albeit a Widow's Proportion of the Husband's Movables called *jus relictae*, is only a third in Case of Children of the Marriage and a Half when there are none: Yet her Terce is the same, whether there be Children or not. The Quota of a Terce was once thought so just and rational, that in old Time voluntary Liferents were always restricted to a Terce; Nothing more being understood as designed thereby, than only to prevent the Trouble and Difficulty of recovering Possessions by Service and Renning. The Husband was allowed to give less but no more than a third of his Heretage in Name of Dowrie. Reg. maj. Lib. 2. Cap. 16. n. 6. In Proceps of some voluntary Liferent Infeftments even of the Husband's whole Inheritance were sustained with the Burden only of maintaining the Heir, who had no separate Fortune, according to his Quality, and of a necessary Aliment to unprovided younger Children. A Terce extends to Infeftments of Tithes 13 Feb. 1628. Lady Dunsfermling contra the Earl. And of Annuelrents ult. Novemb. 1630. Tenants of Cuthouses contra Hepburn. But not to other Rights of Tithes 9 Feb. 1667. Monerief contra Tenants of Newloun & Zeaman. A Terce was found to extend to a Grassyard set for Rent to Tenants not being a