

is presumed from unquarrelled Habitation c. 24. ff. de ritu nupt. Quia
 this, as all other Presumptions of Law, is taken off by contrary Proof
 McLenzie Observ. on d. Act 77. Par. 6. g. 4. And albeit it suffices in
 the Service, to prove that the Husband was looked upon at his Death, as
 heretofore Possessor of the Lands in Question, yet the safest Course is to
 give his Seisin Stair Jrd. The Points of the Brief being found proven,
 the Judge determines a Force of the Lands in the Claim belonging to the
 Relict. The Time of the Husband's Death must be specified in the Service
 to the End that the Relict's Right to the Profits of the Force from the
 next Term after, may be declared and determined Craig Jrd. Stair Jrd.
 Force being assigned to a Widow, she may either possess the Lands pro indiviso
 with the Proprietor, and uplift her Force out of the whole Rent, or she may
 crave her Force to be kenn'd, that is, divided from the two Thirds belonging
 to him Stair Jrd.

A Widow is kenn'd to her Force thus. After Service of the Brief, the
 Judge to whom it was directed doth, without returning it, at the Relict's Request
 or Lot for determining, whether the Division shall be by the Sun or the Shadow
 or Lots for determining, whether the Division shall be by the Sun or the Shadow
 by the Sun or shadow Part; that is, if it shall begin at the East or at the West
 And according as the Lot falls, the Judge begins at the East or West Part, and
 reckons two Acres to the Heir, and a Third to the Relict; and distinguishes
 the same from the two Acres allotted to the Heir, by setting up Markes,
 upon which an Instrument expressing these Markes is taken and entered
 that serves to the Widow for a Seisin in her Force Craig Jrd. But this Method
 of Kenn'ing is not expedient, except all the Lands are in Use to be set in
 Dale. The more proper Way of Division, is by designing and setting apart
 many Rooms for the Force, and leaving the rest to the Heir, according
 to the Value of the Lands or Rent. Albeit there's no Force of burghage Lands or
 Houses within Burgh: Yet rural Tenements as dwelling-Houses and Offices
 Houses are to be divided as most convenient for the Parties. The Relict gets
 the second House commodious for Habitation. If there be none such, the Heir
 must afford a dwelling-House, or divide with her the principal Mansion-House
 The like Order is observed in other Houses of Office as Stables Byres Barn
 Barnyards &c. Annualrents Tithes Pasturage and Fuel are also divided Craig
 Jrd. g. 10. vers. Fides autem. A Widow hath Right to her Force from the next
 Term after her Husband's Death.

The Service of a Widow to her Force, intitles her to pursue Mails & Duties
 for Payment thereof 15 March 1632 Relict of Veitch of Dawick contra
 not only of Years subsequent to the Service, but of all from
 the next Term after the Husband's Death to which the Service ought to
 be drawn back 25 November 1624 Tenants contra Crawford and Fleeming
 November 1627 Tenants of Easthouses contra Hepburn Craig Jrd. g. 11. In fine
 about

Albeit Tenants who never paid any Duty since the Husband's Decease, con-
 not be conveyed for more than he was in Use to receive from them 31
 January 1628 Lady Dumfermling contra the Earl her Son. The Force,
 is not to be regulated according to the Quantity of Rent paid in the Husband's
 Time or at his Death: But the Heir or other Intruder will be liable for
 more or less according as they uplift and according as the Rent rises or falls
 eod. inter eodem. Without Addition of Factor-fee for uplifting the Force
 promiscuously with the two Parts before they were distinguished by the
 and Kenn'ing. Albeit the Heir could not have gathered in her Proportion
 had she had the Management thereof herself without Charge 27 March
 1634 inter eodem. But the a Force has Right by her Service to Mails
 and Duties, she cannot pursue real Actions, as a Removing for obtaining
 possession of the Ground, without being kenn'd to the Heir 15 March
 1632 Relict of Veitch of Dawick contra

Force not kenn'd but only brinded pro indiviso sustains as a sufficient
 Title to defend Tenants against a Removing pursued upon an Appoyning
 led against the Husband's Heir, but she behoved to cede the possession to the
 greater Interest of the Heir 3 Feb. 1675 Barclay contra d. A Lady being
 served, and, upon a Decree of the Heir before whom she was served being
 kenn'd to her Force; the Instrument of Kenn'ing was sustained as a sufficient
 Title of Removing against her Tenants, without Production of
 the Service, as a Seisin without Necessity of the Charter or Warrant thereof.
 Nor was she found obliged to cite the apparent Heir of her Husband by whose
 Decease she had Right to her Force 18 March 1630 Lady Maxwell contra her
 Tenants. A Woman being served to a Force out of Pasture Lands, has good
 Interest to apply to the Lords of Session for a Commission to the Judge ordinary
 either to stent the Holding of the whole Lands, that is, take Cognizance how
 many Head of Horses or Cattle can be conveniently grazed or fed thereon,
 that she may have the Privilege to pasture a Third of that Number according
 to her Proportion of Force; or else to divide the Lands in three Parts by Mea-
 sure, and to assign one Third to the Heir to be used at her Pleasure 18
 January 1628 contra McLenzie.

Formerly Relicts were allowed to claim, besides voluntary Provisions
 never so great a Force of the Superplus of any Heretage wherein their Hus-
 bands died infest; unless the voluntary Provision was expressly accepted in
 Satisfaction of Force. Which Custom was not unreasonable in Cases where the
 Contract Provision is small, and the Parties come afterwards to an opulent
 Estate. But on the other Hand, it seems absurd, to give to a Wife already se-
 cured in a vast Jointure, a Force also out of what remains to the Heir which
 perhaps is but some inconsiderable Matter; only because forsooth thro' a Widow's
 Ignorance or Inadvertency, the Clause in Satisfaction of Force was not objected
 to the voluntary Provision: Seeing the Motive and Design of Provisions