

red somewhat on this. I have heard some debate, where a mother relict appraises the fee of her son's lands, for the bygones of her liferent, if that appraising ought to have a legal, and, when it expires, carry away the whole right of the fee, or only give her a temporary fee; that is to say, possession of the whole lands during her lifetime; seeing no more was designed her but an honourable aliment, and an *usufructus*, (which must be *salva rei substantia*), and she ought not to let her bygones run on. See Hope's Minor Pract. cap. 10.; and some think the books of Regiam. Maj. lib. 2. c. 16. which did not suffer nor empower a husband to give more dower to his wife than the third of his heritage in life-rent, more rational; though our custom since, favouring fond husbands, (who often repent what they did *in æstu amoris*), hath abrogated this.

No 47.

1681. July 7. The debate anent the Lady Craigleith's terce (mentioned 17th Feb. 1681), being advised, the LORDS remitted it to the consideration of the ensuing Parliament, who accordingly made the 10th act of that Parliament thereanent.

Fountainball, v. 1. p. 130. & 146.

1763. February 24. M'KINNON against M'DONALD.

No 48.

In a contract of marriage, the wife was provided to a suitable annuity in the event of her surviving her husband, and likewise to a third of the moveables and a half of the conquest, all on the same event; and on her part she assigned in name of tocher to her husband, a bill of her brother's for 1000 merks. Having pre-deceased her husband within the year, he pursued the brothers for the tocher; who urged, in defence, that the conventional provisions in the contract were no discharge of the legal ones, and that these were more than sufficient to compensate the claim for tocher. THE LORDS found, That the provisions in the contract were in full of all the legal provisions.

Fel. Dic. v. 3. p. 302. Fac. Col.

* * * See this case, No 33. p. 2278.

1770. December 12.

ELISABETH TOD, Widow of James Wemyss, Pursuer, against DAVID WEMYSS, the Eldest Son, and the YOUNGER CHILDREN of the deceased James Wemyss, Defenders.

JAMES WEMYSS was married in 1730 to Elizabeth Tod, with whom he received 1000 merks of tocher; and by the contract entered into on that occa-

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No 49.
The widow's
claim to the
jus relictæ,