But the Husband has Relief against Exers or other Heirs or Successors is any Part of the Wifes Estate heretable or moveable, which he has no Right to. Eadem ea mater eadem. Courtesy, as Terce, is affected with all Burdens laid on by Infeftment or Sack; and with the Aliment of the Wifes Heir if she be a Pupil of Sustenance aliunde Stair Lib. 2. Tit. 6. §. 19. Vers. Liferent by the Courtesy hath the same Extension. But it is not burdened by the Ward Nonentry or liferent Escheat of the Wifes Heir Craig Ibid. Vers. Competit autem. Stair Ibid. The Courtesy is excluded by the Ward or Nonentry of the Wifes Superior, or by her own or her Superiors Forfeiture or Recognition Stair Ibid. Or by the Nonentry or liferent Escheat of the Wife but is not excluded by her Ward Stair Ibid. The Courtesy is barred thro the Husband's Adultery, or wilful Desertion of his Wife, or by his committing atrocious Crimes Stair Ibid. Where the Husband of an Heiress who, having the Right and Benefit of Courtesy competent to him, for the Space of 30 Years that he lived after his Wifes Death, never claimed it; the Husband's Exer pursued one who brought the Wifes Land from her Heir and for all that Time had intromitted with the Rents to restore them to him as falling under his Predecessor's Courtesy. It was pleaded for the Defender, that the Husband by never seeking his Courtesy for so many Years while he lived, had tacitly renounced and passed from it; and the Rents gone, being fructus bona fide percepti & consumpti in Virtue of a Right never interrupted by the Husband, cannot be claimed by any as Heir or Exer to him, whose Right was only a personal Privilege that expired with himself: But the Heirs or Exers of a Lady Terce, who died without seeking or being served to her Terce, could never claim it after her Decease. To which it was replied for the Pursuer, the Nature of a Terce herein differs from a Courtesy, that a Lady cannot without a Service which is her Title, pursue for her Terce even in her own Time, and far less can her Exers do it. Whereas the Courtesy belongs to a Husband nomine as Husband, without any other Title or Declarator, and being his Property goes to his Exers; as Rents belonging to any other Liferenter belong to his Representatives. And as the Husband's long Silence or Neglect to take the Benefit of his Courtesy could not have hindered him to claim it at any Time before his Death, and to get Payment of all preceeding Rents: So his Exers are intitled to do the same. The Lords sustained the Defence relevant, notwithstanding of the Reply. For they found, that the Husband not having sought the Benefit of this Courtesy conform to the Law and Custom of Scotland which was competent to him; his Exers could not seek it, especially after so long a Time; where the Rents had been uplifted and spent by Virtue of an heretable Right never interrupted for so many Years 19 January 1636. Vid. aula contra Watson. By the Norman Law the Courtesy ceaseth by the Husband's entering into another Marriage, Craig Ibid. Vers. Sic interest. But it is not so with us.

Sect. 2.

Conventional Liferents or Liferents acquired by Action.

Conventional Liferents are acquired either by Reservation, when an Heritor disponeth to one reserving his own Liferent; or by a separate Right, when he disponeth to a Person during all the Days of his Life; or by Way of conjunct Fee when Lands are disponed or Sums of Money provided to a Man and his Wife in conjunct Fee

Fee and Liferent, which imports only a Liferent to the Wife.

A Liferent of Lands by Reservation, to one before infeft in the Property, needs no Infeftment to compleat and make it effectual against singular Successors M'Kenzie Inst. Lib. 2. Tit. 9. §. 37. Because the Fee passeth only with the Burden thereof, and his own Infeftment standeth pro tanto. But Liferents by Conjunct Fee, or by separate Title, are of no force against singular Successors without Infeftment: The most Part of Services, as those that are real or predial, are effectual by Possession and Possession Stair Lib. 2. Tit. 6. §. 6. Where a Wife has her Husbands and his Heirs obliged to pay her a Liferent Annuity, and she hath got no real Security for it in the Husband's Lifetime; Sir James Stewart (Answers to Doubts Tit. Rental Annuity) thinks it just, that she may pursue her Husband's Heirs to grant her an Infeftment of Annualrent, or may adjudge for her Annualrent. Tho this Case wanteth not some Difficulty in our Custom.

Liferenters by Reservation, and those by conjunct Fee, may enter the Heirs of Vassals, and have Right to the Casualties of Superiority that fall during their Liferime Craig Lib. 2. Tit. 22. §. 2. pr. Stair Ibid. §. 11. M'Kenzie Ibid. §. 38. Sir George M'Kenzie (Ibid.) is of Opinion that Liferenters by Reservation cannot receive singular Successors to their Vassals. And Sir James Stewart (Ibid. Tit. conjunct Fiar) says that a Lady conjunct Fiar is now thought no better than a naked Liferenter so that she cannot receive Vassals. But a simple Liferenter by a separate Right is not empowered to receive the Heirs of Vassals and has no Interest in the Casualties of Superiority Craig Ibid. §. 7. Stair Ibid. Liferenters by Infeftment are intitled to vote in the Election of, or to be elected Commissioners for Shires or Stewartries to the Parliament or a Convention of Estates Act 21. Par. 3. Ch. 2.

An Infeftment of Liferent cannot be wronged by any after Deed of the Constituent or his singular Successor. Thus a Man obliged to provide his Wife to the Liferent of all Sums which he should acquire during the Marriage to himself and his Heirs, having taken Bond for a Sum acquired in that Time in the Name of his second Son; she was found intitled to claim the Annualrent thereof during her Life, albeit the second Son was not his Heir and the Heir was found obliged to make it effectual to her 16 July 1625 Knox contra Brown. 19 March 1632 Graham contra Finnie's Heirs. Not only was a Liferenter found preferred to those who had apprised the Land from the Constituent; but also the Latter were made liable to the Former for the true Rent of the Land, according as such Lands in that Part of the Country used to pay tho the Apprisers had set them to Tenents for a less Rent, and they had never been set before; unless the Tack-Duty for which the Apprisers set the Lands were near to the Value. 9 March 1631 Lady Huttonhall contra Lairds of Morison and Touch.

Infeftments of Liferent may be conveyed by Assignation, voluntary or legal, without Infeftment Stair Lib. 2. Tit. 6. §. 7. Lib. 3. Tit. 1. §. 16. M'Kenzie Ibid. §. 37. Because there can be no subaltern Infeftment of the Liferent, which is personal to the Liferenter or incommunicable to others. The Fruits and Profits thence arising, which are communicable, may indeed be simply assigned: But this is not a Liferent in the Assignee's Person.

Having