

No 31.

Replied for William Mitchel; That the pursuer's offer to find caution for so much of the tocher as should be made furthcoming to him, fell far short of answering either the wife's interest, or that of her issue, stipulated by the contract. That the pursuer's title was no better than Mr Hog's; and if he were insisting to uplift the tocher, or a part of it, surely it would be a good answer, to desire him to implement the prestations incumbent on him, in terms of the contract; seeing that was the consideration and mutual cause of assigning the portion to him, that she was not only to have the liferent of her own money secured to her, but likewise that of his, and the whole joint stock provided to the issue of the marriage; so that it is by no means sufficient to offer a partial performance, in so far as he was enabled by her own money; seeing that would be to proceed as if there had been no mutual contract at all, or any provision made on his part. See 4th July 1732, Creditors of David Watson, *voce* MUTUAL CONTRACT; Dec. 1721, Selkrig, *IBIDEM*; July 1724, Martin. See *IBIDEM*.

THE LORDS found, that the sum of L. 186 due by William Mitchel, being assigned by Elizabeth Mitchel, in her contract of marriage with James Hog, to herself in liferent; that the said William Mitchel, brother and trustee for execution of the contract, cannot be obliged to make furthcoming to the pursuer any part of the principal sum due by him, unless the pursuer shall find caution for the whole liferent provided to the said Elizabeth, in case of her survivance.

C. Home, No 240. p. 389.

S E C T. IV.

What incumbent on the liferenter and fiar as to repairs of the subjects.--Liferent of Furniture.--*Bnuos* on bank stock.

No 32.

1612. *June 23.*BRUCE *against* SINCLAIR.

A LIFERENTER, outwith burgh, may be charged to find caution to the heritor to uphold the houses of her conjunct-fee lands without recognition, and with certification that she shall tyne her liferent of the said houses.

Fol. Dic. v. 1. p. 550. Haddington, MS. No 2467.

No 33.
The act 25th,
Parl. 1491,
appointing

1626. *March 23.*FOULIS *against* ALLAN.

GEORGE FOULIS, heritor of a tenement of land in Edinburgh, raises letters, and charges upon the act of Parliament Ja. IV. *anno* 1491, and another act Ja.