

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.*

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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.

V. *anno* 1535, against Isobel Allan, liferenter of that same tenement, to entertain that tenement, in the case wherein she received the same, and to find caution to that effect; which charges being suspended by her, upon a reason founded by her, upon a posterior act of Parliament, Ja. VI. *anno* 1594, ch. 226, By the which act, it is provided, 'That such caution ought not to be found, while first a precognition had preceded, and been taken concerning the estate of the tenement;' so that nothing being done, which is prescribed by that act of Parliament, wherein the order which should be observed in such cases, in all time thereafter, is expressly set down, and the former acts are explained, whereby caution cannot be sought, nor found, while that be performed; likeas, by the said act, it is provided, 'That the heritor may enter to the said lands, in case of not finding of caution, and possess the same, he finding caution to the liferenter to pay to her the mails yearly, during her lifetime, as the land presently gives;' and she is content, conform to the act, that he enter, finding caution to her to that effect foresaid.—THE LORDS found the charges orderly proceeded against the liferenter, for causing of her to find caution, according to the foresaid first act of Parliament Ja. IV.; which act they found not to be prejudged by the said last act 1594 in any sort, but to be ratified thereby; and that any order therein set down, which appears to differ from the preceding acts, is appointed only for decayed and ruinous lands which are liferented, that the heritor may repair and big the same; which reparation cannot be made by a liferenter, nor she cannot be urged thereto, she only bruiking by a temporal right, *quo casu* the heritor entering to the same for that end, caution should be found by him to pay the mails to the liferenter, as that decayed land presently paid; and that act concerned not other land which was not ruinous, which the liferenter was holden by the preceding first act of Parliament to preserve in as good estate as it was when she entered thereto, of the nature whereof this tenement controverted was; for that last act was also in favours of the heritor, who thereby hath the privilege of reparation of burnt, ruinous, and decayed lands, given to him, in respect of policy had and to be kept within burgh.

Act. *Foulis*.Alt. *Burnet, minor*.Clerk, *Gibson*.*Fol. Dic. v. 1. p 550. Durie, p. 196.*1635. *January 23.* YOUNG LAIRD OF CADDEL *against* DOUGLAS.

THE young Laird of Caddell having got, from his father, infestment of all his lands, by contract sets to his father the mains of Caddell, with the house, and manor place thereof, for all the days of his father's lifetime. Francis Douglas, brother-in-law to the old Laird, takes the gift of his escheat, and makes Stephen Boyd assignee to the said gift, for debts owing by the old Laird to Stephen Boyd. The young Laird of Caddell fiar, intents summons against Francis Dou-

No 33.

*cautionem usufructuariam* is not rescinded by the act 226th, Parl. 1594.

This last regards ruinous houses, which a liferentrix cannot be required to repair.

No 34.

The Lords extended the act which requires liferenters to find caution to uphold houses, to a person who had infest his son in his lands, and