

1706. February 22.

ARTHUR TEMPLE and HALIDAY against ADAM GAIRNS of Greenhill.

The said Arthur having right to a tenement in the Lawn-market of Edinburgh, and failing of him and heirs of his body, it being tailzied to the said Adam Gairns; and in the fire which happened in October 1701, this tenement being spoiled and deteriorated, to stop the progress of the fire, the said Arthur did not only repair it, but made such alterations and reformations on it as stood 4000 merks; and then pursued Adam Gairns, (whom he had required to repair it, as being the next substitute fiar,) that the said tenement should stand affected with the said expenses wared out, in case he deceased without heirs of his body, and that the fee devolve to the said Adam Gairns. Alleged, Whatever reason there might have been to put the tenement in the condition it was in before the burning or demolishing, yet there was no sort of necessity to exceed in such extravagant reparations, and which, if he live any time, will be of no use to the next substitute, but will decay and need new reparations; likeas, he being fiar, the debt is extinct and consolidated, being both debtor and creditor; and if an heir meliorate his predecessor's estate by paying off the debts, he cannot assign them to a third party, so as to keep them up as debts on the estate; and it was so found and decided, between Lord John Hamilton, now Earl of Ruglen, and the Earl of Callander, in 1687, Sect. 3. *infra*; and to make this 4000 merks go along as a burden on the tenement, were to annihilate the fee to the next substitute, for it would exhaust the value of the tenement; and at this rate life-renters were gainers, if houses burnt down must be wholly repaired by the fiar, and no part laid on the life-renter, who was bound to uphold it during his possession; and the eighth article of the act of Parliament 1551, determines the skaith of burnt lands, whereby the fiar pays only a third part of the necessary reparations. Answered, That the reparations were authorised by the Dean of Guild, and proved by the workmen's depositions; and he being only life-renter, it was reasonable the sum expended should affect the fee, being thereby meliorated; and he having borrowed the money with which he repaired it, the creditors will fall upon his life-rent of the tenement, and leave him nothing, especially being claimed by Halliday his creditor, and being *in rem versum*, which by the Roman law gave a hypothec in the house or ship repaired. The Lords thought the fee behoved to be affected with these reparations, but doubted whether the life-renter or fiar should pay their annual-rent, or if the meliorations must stand for that.

There was a reclaiming bill given in by Greenhill, against this interlocutor, upon sundry grounds in law; but the Lords adhered.

*Fol. Dic. v. 2. p. 435. Fountainhall, v. 2. p. 331.*

No. 8.

Improvements made on the entail'd estate.