

servitudes do, *ubi perit subjectum*: *Answered*, She only insists for repossession, being put from it by the fire; and as to the share she may acclaim, there is a notable rule laid down by the 10th act of Parliament, 1551, for rebuilding the burnt tenements in Edinburgh consumed by the English, after the victory obtained at Musselburgh, in the last article whereof it is provided, that liferenters of such burnt lands, now rebuilt, shall have right to a third of the rent which the house paid before the burning; and she subjoins, that her houses paid 500 mēks yearly; and so the Dean of Guild must pay her the third of that mail ever since the rebuilding, and yearly in time coming; and this rule has been followed by subsequent Parliaments, as by act 58th, 1573; act 226th, 1594; and act 6th, 1663. *Replied*, The act 1551 was but a temporary regulation, and concerns ground-annuals due to chaplains, and other kirkmen, by mortifications; and though Mr William Clark's waste land at the Cross, and some others, were valued higher, at six or seven years purchase, yet he could get no more but four years, and is willing to give his oath there was neither collusion nor concealment, and he always offered her the annualrent of that sum.—The Lords found the charge unwarrantable; but, in respect of the suspender's consent, they sustained it as a libel; and found him liable in no more but the annualrent of the four years purchase, to which the price of the waste ground was liquidated, and for which they decerned during the liferenter's lifetime. The Dean of Guild's son, and Thomas Boys, writer, being cautioners in the suspension for him, they applied to the Lords by a bill, and represented, that the charge being found unwarrantable, and only turned to a libel, of consent, otherwise she behoved to have raised a new pursuit, they were, by the law and practiques of the nation, liberated of their cautionry; and, therefore, craved up their bond.—The Lords found them free, and this conform to prior decisions, cited by Stair, in his Institutions, Lib. 1. Tit. 17.

Fol. Dic. v. 2. p. 61. Fountainhall, v. 2. p. 247.

S E C T. X.

Hazard of the rising or falling of Money.

1540. May 12. MR JAMES FOULIS *against* JAMES CRAIG.

GIF ony landis be annalzeit under reversioun, contēnand ane certane sowme of gold and silver, he to quhom the reversioun is maid may redeme the landis,

No 77.

payand or consignand ony peice of gold, and the rest in silver, or ony peice in silver, the rest in gold; for it is not necessary in this cais to give ane half of the sowme in gold, and the uthir half in silver, or zit that the gold or silver quhilk he payis or consignis be pure, and without commixtioun of ony uthir metall; bot it is sufficient to pay sic silver and gold as has commoun course within the countrey for the time. And gif the value of the gold and silver contenit in the reversioun be mair and greiter at the time of the redemptioun than it was at the time of the alienatioun, the excrescence and superplus thair-
of cedit lucro venditoris.

Fol. Dic. v. 2. p. 61. Balfour, (REVERSIOUNIS.) No 11. p. 455.

No 78.

1731. February 6.

HAMILTON against CORBET.

THE value imposed upon money, by public authority, is the only thing considered in payments, and not the metal of which it is made; at the same time, it is not at the time of contracting the debt that the value of the money is to be considered, but the time of payment; and, therefore, when the value of the coin is augmented or diminished, the profit or loss is the debtor's and not the creditor's.—*See APPENDIX.*

Fol. Dic. v. 2. p. 62.

S E C T. XI.

Teind where the Stock is destroyed.—Multure where the Ground
is destroyed.

1549. January 20.

ABBOT of HOLYROODHOUSE against The LAIRD of INVERLEITH.

No 79.

(A PERSON not to be compelled to pay teind.)

GIF the landis wer lyand waist be the deceis of his tenentis labouraris thair-
of, quha wes ather slane be the enemie, or deceist be the pestilence; or gif
ony multitude or armie, not beand enemeis bot confederatis of this realme, or
of our Soverane Ladyis awin liegis, eates, be oppin force and violence, cornis,
or destroyis, reivis and takis away the samin cornis.

Fol. Dic. v. 2. p. 62. Balfour, (TEINDIS OF BENEFICES.) No 8. p. 146.