

1682. *January 4.*RACHEL WILKIE *against* HENRY MORISON.

No 75.

A wife being infest in annuity out of a house, the Lords found the husband's heir liable to make it habitable, and personally liable for the annuity, till habitable.

IN an action pursued by Rachel Wilkie against Mr Henry Morison, as representing her husband, Henry Morison, for fulfilling of her contract of marriage, *viz.* for employing of 20,000 merks for her liferent use; and also, in regard there was an obligation in the said contract, for infesting of her in an annualrent of 400 merks, to be uplifted out of several tenements belonging to her husband in Edinburgh, which tenements became ruinous, and were taken down by the defender, by order from the Dean of Guild, she did conclude, that Mr Henry, as heir to her husband, ought to be liable to her for the said yearly annualrent. And it being *alleged* for the defender, That he, as heir to her husband, could not be liable personally for payment of the annualrent, in regard there was no personal obligation for payment in the contract, but allentarily personal obligation for infesting, and which was fulfilled, she being infest accordingly:—THE LORDS found, that this being a contract of marriage, which was *contractus maximæ bonæ fidei*, the husband was liable to make the tenement habitable; and, therefore, the tenement having become ruinous by time, they found the defender, as heir to the husband, was liable for the bygone annualrent, and in time coming, till the tenement was rebuilt, and made so that she might have tenants thereto.

Fol. Dic. v. 2. p. 61. P. Falconer, No 15. p. 7.

* * Harcarse and Sir P. Home's reports of this case are No 36. p. 8274.
voce LIFERENTER.

1704. *December 15.*REBECCA ADAMSON *against* DEAN of GUILD NICOLSON.

No 76.

A house, in the possession of a liferentrix, was casually burnt. The Lords found the heir liable to the liferenter in no more but the annualrent of the sum to which the price of the waste ground was liquidated, and at which he had sold it.

LORD TILlicOUNTRY reported Rebecca Adamson, relict of George Graham, merchant, against Dean of Guild Nicolson of Trabroun. The said Rebecca charges the Dean of Guild on a liferent-tack of a house at the entry to the Parliament Close, to put her in possession of the same. He suspends on this reason, that the charge is most unwarrantable, seeing the tack bears she was in possession at the very time of the setting, and so there was no clause warranting a summary charge; *2do*, Though it were turned to a libel, yet this house being burnt down by that dreadful fire on the 3d of February 1700, the Magistrates cognosced the value of the ground, and apprised his fee and property to four years purchase, at which rate he sold it; and so it being now rebuilt, he can be liable in no more but the annualrent of the price he got since the time he received it; for it being consumed *vi majore*, without his fault, as the property ceased during its lying in rubbish, so must her usufruct, and all other