

the subject in good order ; Durnford's Reports, Bulloch against Dommit ;* and on their negligence in leaving a kiln, so constructed, at night, without a watch ; Vinnius' Inst. lib. 3. T. 25.

No 71.

The defenders maintained, that a tenant is in no case liable, where the subject is burned by accident ; and contended, that the fire, in the present case, was occasioned by the improper construction of the kiln, which, though known to their servant, was concealed from themselves ; and that it was not usual to watch kilns in the night time.

A considerable majority of the Court thought there was sufficient evidence of negligence on the part of the defenders to support the interlocutor ; and on that ground adhered.

Lord Ordinary, Swinton. Act. Ja. Ferguson, jun. Alt. Cha. Brown. Clerk, Sinclair.
D. D. Fac. Col. No 43. p. 191.

S E C T. VIII.

Whether a Creditor runs any hazard of the subject burdened with his debt.

1662. June 26. ADAMSON against LORD BALMERINO.

No 72.

A TENEMENT, out of which an annual rent was payable, being laid waste, several years deduction was sought by a singular successor in the tenement, of the annual rents of these years, as is frequently done in feu-duties.—*Answered*, Tho' in some cases feu-duties cease by devastation, this was never extended to annual rents due for the profit of a stock of money. The defence was repelled.

Fol. Dic. v. 2. p. 61. Stair.

* * This case is No 3. p. 3346, voce DEBTOR and CREDITOR.

1686. January. GEORGE MONTEITH against ANDERSON.

JOHN ANDERSON having right by progress to an infeftment of annual rent of L. 80 yearly out of a tenement of land in Edinburgh, pursues poinding of the

No 73.
Found, that
by act 10th,
Parl. 1551.

* The Reporters do not, in any case, vouch for the accuracy of references to authorities from the Law of England.

No 73.
 an annual-
 renter must
 suffer a pro-
 portional
 abatement
 when a tene-
 ment is burnt.

ground.—*Alleged* for the said George Monteith, who had adjudged the tenements from William Anderson the heritor, That the tenement being burnt, and since re-built upon the heritor's expenses, the pursuer cannot poind the ground for his whole annualrent, but it must abide a proportional deduction with those having right to the property, conform to the 10th act of Parl. 4th Queen Mary, anent the annuals of burnt lands; and the town of Edinburgh, by an act of Council appointed annualrenters to be at a part of the expense of building.—*Answered*, That the ground on which the tenement was built was valued to the worth of 5000 merks, after the house was burnt, which was more than the pursuer had upon the land, and therefore ought to suffer no deduction; and the act of Parliament can only be understood to take place in case the ground be not worth so much as will pay the annualrent; and if the heritor has been at the expenses of re-building the tenement, he has the benefit of the meliorations, which will be more than the annualrent of his money that he has bestowed upon the building; whereas the pursuer, the annualrenter, gets no benefit by these meliorations; and however the act of the town Council of Edinburgh may regulate the order and method of building, for the profit and decorement of the burgh, yet that cannot prejudice parties' rights.—*Duplied*, That albeit the ground of the burnt tenement was valued to 5000 merks, that was only in order to re-building; but if it had not been re-built, it would not have yielded any annualrent; so that the pursuer would not have gotten payment of his annualrent; and the act of Parliament is express, that if the annualrenters would contribute and pay a part of the expenses, for the rate of the annual, that they shall have the hail annual after the bigging of the houses; so that if the annualrenter have not contributed any part of the expenses for re-building of the houses, he cannot have payment of his annualrent. And albeit the heritor, by the meliorations of the building, should get the annualrent of his money by the re-building, yet he being at a loss by the burning, and being at the charges of the re-building, the annualrenter ought to suffer a proportional loss, and bear a part of the expenses with the heritor, before he can get payment of his annualrent.—**THE LORDS** found, That by the act of Parliament the annualrenter might suffer a proportional deduction, in respect the tenement was burnt and re-built, and that the annualrenter did not contribute thereto; and repelled the defence, that the value of the waste ground was worth the annualrent; but found it relevant to sustain the hail annualrent, that the annualrenter offered to contribute with the heritor to the re-building, and was not admitted.

Fol. Dic. v. 2. p. 61. Sir P. Home, MS. No 771.