

of that Money, during the Liferenters Lifetime while he enjoyed the Rent of the Tenement 17 Feb. 1700 *Idem contra Cunningham* it being reasonable that both Parties should bear the Loss pro rata according to their Interest in the Subject. ~~reduced~~ Now the absolute Property within Burgh, is ordinarily estimated at ten, and rarely at twelve Years Purchase, and the Liferent at Seven. But Liferentes of Tenements within Burgh, that are not decayed or ruinous, may be compelled, as other Liferentes of Lands in the Country to preserve them in as good Case as they enjoy'd thereto, without Necessity of any Recognition of the Condition they were then in 2 March 1626 *Foulis contra Allan*. That is, the Liferenter of a House is bound to make the small Repairs of it, and to lay out the Expenses which may be necessary for preserving and keeping it. But he is not bound to be at the Charge of the greater Repairs, such as the Rebuilding of the House that is fallen without any Neglect of his *L. 7. C. 1. ff. de usufructu. l. 7. ff. eod. Les Loix Civiles de. Tom. 1. Part. 1. Liv. 1. Tit. 11. Sect. 4. p. 6.*

A Liferent consists in the full and free Enjoyment of all the Kinds of Fruits Revenues, Conveniencies, and Uses which may be reape from the Thing of which one has the Liferent *L. 7. pr. & s. 1. l. 9. pr. l. 59. ff. de usufructu.* A Liferenter is to take only reasonable sustentation or to use the Subject Liferented in Things needful without Waste or Destruction *Act 15. Par. 4. s. 5.* Sir John Misset (Doubts and Questions of Law Sit. West) is of Opinion that if a Wadsetter or Liferenter commit Waste and the Heritor die or dispone the Land, the Action of Waste being actio in rem by our Law will belong to the Heir or singular Successor. As to which, it seems probable, that this Action would be transmitted to the Heir, but it is not so clear, that it would pass to a singular Successor, yea it seems contrary to the Analogy of our Law, there being Nothing real in such an Action. See Answers *ffid.*

It hath been controverted whether Wood and Coal be Parts or only Fruits of the Ground, so as Liferenters of Lands, or Superiors possessing the same by Ward, may have any Interest therein? Craig (*Feud. Lib. 2. Tit. 8. p. 1.*) is of Opinion, that both are Parts of the Ground, and that Liferenters whose Right extendeth only to the Fruits have no Title to dig the one or cut down the other. The *L. Stair* (*Inst. Lib. 2. Tit. 3. s. 74*) distinguishes them, where the former Proprietor did not preserve the Wood to be sold together, but used it as *sylva caeva* underwood or coppice wood used to be lopped

lopped or felled by cutting Parts of it for his own or his Tenants Use, or to repair Houses &c. Liferenters and Superiors coming after him, may do the like. That is, ita incisionem facere possunt, ut ad fructum pertinent, non ad destructionem. *L. 9. ff. ult. ff. de usufructu Stair 16.* And where Woods have been divided by the Heritor into Kaggs, so that they yield a yearly Profit, and are used as Fruits rather as Parts of the Ground, Liferenters &c. may claim the same Part *ffid.* A Liferenter may make Nurseries and enjoy use and sell young Trees, which may be taken out of a Nursery without spoiling it *L. 9. ff. de usufructu. Nov. tit. 1. ff. de usufructu.* Liferenters probably be excluded from the Profits of a constant going Coal, which is not in any apparent Hazard of being exhausted, so that they work it in the Way and Manner, and according to the Measure, &c. observed by the Proprietor *Stair 16.* But a simple Liferenter not in conjunct Fee, hath no Right to a going Coal in the Liferent Lands that used to be sold 13 July 1677 *Lady Preston contra Lord Preston & Women* inquest in Liferent cum carbonibus carbonariis, may not, if the Lands were no going Coal, break Ground and search for Coal in Order to selling, tho she may for her own proper Use, upon making up to the Heritor any Damage he sustains by breaking the Ground, *Craig ffid. vers. sit in his. Rowat ffid. ffid. Coals.* The civil Law empower a Liferenter to open a Quarry in the Ground and to enjoy the Stones which he digs out of it, which are in Stead of Fruits, provided the Estate be improved or the Revenue increased, and no Detriment accrue to the Proprietor *L. 13. s. 5 & 6. ff. de usufructu.* And a learned Lawyer (*Les Loix Civiles de. Tom. 1. Liv. 1. Tit. 11. Sect. 1. s. 9.*) says, it is the same Thing with respect to other Matters which the Liferenter shall get out of the Ground. Trees blown down by the Wind or by some other Accident, belong to the Proprietor of the Ground of which they were a Part, *Les Loix Civiles de. ffid. s. 10.* And he is obliged to carrie them away at his own Charge, that they may no ways incommode *L. 9. s. 1. ff. de usufructu.* And the Liferenter, who receives no Benefit by them, is not obliged to plant new ones in their Stead *L. 59. pr. ff. eod.* But dead Trees belong to the Liferenter, as a Kind of Revenue with the Charge of planting new ones in their Room *L. 10. ff. eod.* In short, a Liferenter is under Engagement to use and enjoy the Subject Liferented, in the same Manner as a good husband would do drawing from it such Advantages as he can make without misusing or diminishing it and without changing even what is destined for ^{his} Pleasure, altho it were to improve the Revenue. Thus he cannot cut down the Trees of an Avenue, in order to make a Kitchen-garden or to sow Corn in the