

No 102.

payment or offer had been made to the superior, or his chamberlain.

mons of declarator of the nullity of the feu, in respect of the provision and clause irritant, and of the requisition foresaid, made in his name, and not obeyed by Pitfoddels. It was *excepted* by Pitfoddels, That he had obeyed the requisition, by the real offer to my Lord of Torphichen's procurator. It was *answered*, That it was not sufficient to offer to his procurator, because he had no power to receive; and the requisition was to pay to himself, or his chamberlain, in his house of Cadder, where he should be present, by himself or his chamberlain, by the space of eight days, to receive payment, and give discharges; which not being obeyed, the clause irritant was incurred. In respect of the which reply, the Lords repelled the exception.

*Fol. Dic. v. 1. p. 491. Haddington, MS. No. 1974.*

No 103.

An offer, without consignation, was found sufficient, there having been no stipulation in the contract, that consignation should be made, in case of refusal to receive the money when offered.

1627. March 20.

JOHNSTON against Lo. HERRIES.

In an action pursued by Johnston of Eschescheills against Lo. Herries, to hear and see a reversion decerned to be extinct, because it is therein provided, that, if the party, in whose favour it was granted, did not offer the money, whereupon the lands were redeemable, at the time therein prefixed, in that case it should expire; and in the reason, he subsumed that he had failzied. The defender compearing, *alleged*, That he had really offered the money *debito tempore*, and so had the benefit of the reversion still competent; and the pursuer *contended*, That the offer, unless consignation had been made also after the offer, could not be admitted as sufficient to stay the failzie. The Lords found a real offer was sufficient to stay the force of the expiring of the said reversion, albeit no consignation was thereafter made; which the Lords found noways necessary, the said offer being really and lawfully made, as said is, seeing, in the clause of reversion, there was no provision, appointing consignation to be made, in case of refusal to receive the money the time of the offer.

*Act. Cunningham*

*Alt. Belsbes.*

*Clerk, Scot.*

*Fol. Dic. v. 1. p. 491. Durie, p. 292.*

Ground of compensation, if it will prevent the irritancy from taking place.—

*See COMPENSATION.*

Irritancy, upon marrying without consent.—*See CONDITION.*

To whom competent to plead the benefit of an irritancy.—*See JUS TERTII.—PERSONAL AND TRANSMISSIBLE.*

*See SALE.—Lex Commissoria.*

*See APPENDIX.*