

1686. March 23.

DRUMMOND of Riccarton *against* HAMILTON'S CREDITORS.

DRUMMOND of Riccarton seeks to reduce the rights of Bonhard, and the other creditors on the estate of Hamilton of Grange, *ob non solutum canonem*, for many years.—*Answered*, They offered to purge.—*Replied*, This being a conventional irritancy in the body of the writ, it was not purgeable now.—*Duplied*, They were creditors, and justly ignorant of the clauses contained in their debtor's right.—THE LGKDS found it purgeable; though it was alleged to have been incurred before the debtor's own death.

*Fol. Dic. v. I. p. 488. Fountainball, v. I. p. 409.*

1737. June 18.

JOHN CARRUTHERS of Holmains *against* JOHN JOHNSTON of Persbyhall.

CARRUTHERS of Holmains, in the year 1669, granted a feu of the lands of Persbyhall to Christopher Johnston, under this provision, 'That, if twelve terms of the feu-duty should run together unpaid, in that case, the disposition, &c. should thereafter be null and ineffectual, as if the same had never been granted.' Upon this clause, Holmains brought a reduction and improbation against his vassal, in regard the feu-duties had not been paid since the year 1690.

The defence for Persbyhall resolved in these two points: *1mo*, That the irritancy never was incurred, in regard the vassal had duly offered his feu-duties to the superior once every six years, since Martinmas 1690, when the last payment was made; for vouching of which, several instruments were produced. *2do*, *Esto* no offer had been made, yet irritancies of this kind being odious, are always allowed to be purged at the bar any time before declarator.

*Answered* for the pursuer; That it was true there were several instruments produced by Persbyhall, said to be taken by him and his father against the superior, at different periods, from the year 1696 down to the year 1728, in order to take off the irritancy.

As to the *first* of which, it was observed; That it did not prove any offer was made by the vassal to the superior; for all it bears is, That the same was taken at Kirkwoodgate, without saying, in presence of the superior, or that an intimation was made to him, or any of his family, or the money told down, but only that the bygone feu-duties in general were offered. Now, if this instru-

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A conventional irritancy *ob non solutum canonem* was found purgeable at the bar, in respect it appeared, that the vassal had offered his feu-duties at the superior's place of residence.