foresaid bond in the singular number, and agreeably to the will, the messengers executions (there being two of them) mentioned also bond in the singular number, though in the register they had erroneously added the letter *s*. And I at first sustained the objection, but afterwards on showing me a decreet 8th July 1725 in a question on this very inhibition with Callender of Craigforth, where the same objection was repelled, I thought it did not become me to contradict a judgment in point of the whole Court. Therefore I gave my interlocutor in respect of that former judgment repelling the objection. Pittrievie reclaimed, and the President and others were of my opinion, that when preference is claimed on legal diligence, especially when that diligence is used to reduce onerous transactions as being *spreta auctoritate*, that if there be any defect in the diligence equity cannot interpose to supply it. And I observed further, that there was more here wanting than the letter *s*, because Sir Robert Miln could not be inhibited on both bonds. But on the question it carried to adhere to my interlocutor, *renit.* President *et me.*

No. 16. 1751, July 3. CREDITORS of COCKBURN of LANGTOWN, *Competing.*

See Note of No. 11. *voce* ANNUALRENT.

No. 17. 1751, July 3. CREDITORS of WILLIAM M'KAY, *Competing.*

AN inhibitor objected to a bond in 1742 as after inhibition. Answered, That the bond was granted for a writer's account partly before the inhibition, partly after, and founded on a letter employing him prior to the inhibition. The Lords sustained the bond as to all the articles prior to the inhibition, but sustained the objection to the bond as to all the articles after inhibition and as to annualrent. 2dly, Objected to the inhibition, which was against a man and wife, as the execution bore, "whereof I delivered to the said Elizabeth Fowler and William M'Kay personally apprehended one just and authentic copy;" that therefore only one copy was delivered to both, and it does not appear to which;—but we thought that it imported one copy to each of them, and repelled the objection, *renit.* Justice-Clerk, and Shewalton, Ordinary; 3dly, An inhibition being raised on depending processes which they submitted, and decreet-arbitral was pronounced, upon which diligence followed,—it was objected that there having no decreet followed on the depending process, the inhibition was of no avail,—and we sustained the objection.

No. 18. 1752, June 5. CREDITORS of SIR G. HAMILTON, *Competing.*

See Note of No. 43. *voce* ADJUDICATION.

IRRITANCY.

No. 1. 1735, June 11. MR KIRK *against* SIR JOHN GORDON.

THE Lords would not affirm the interlocutor founded upon the irritancy incurred in April 1733 before the payment in November 1733, which they generally thought purged

the irritancy, though Drummore and some others thought otherwise, but they found the irritancy incurred by not paying the moiety due at Martinmas 1733 for crop 1732, because the Ministers prohibition was only for crop 1733 and in time coming.

No. 2. 1737, June 17. CARRUTHERS *against* JOHNSTON.

WE sustained the defence and found the irritancy of the feu not incurred. We thought indeed that the first instrument of offer of the feu-duty in 1696 was good for nothing, but that the superior's always offering to take the feu-duty on condition of the vassal's taking a new charter in the terms mentioned in the prints, and the letter 1722 dispensing with offering the feu-duty at the term, was acknowledging him still vassal and passing from former irritancies *in re tam odiosa*.

No. 3. 1738, Nov. 10. GEORGE STORRIE *against* ROBERT POLLOCK.

THE Lords found that the reverser having used no order of redemption for 40 years after 1695 when the irritancy was incurred, the lands are now irredeemable. This carried by President's casting vote, and Arniston was of the same opinion, who thought that though this was *pactum legis commissoriæ in pignore*, yet the irritancy was *ipso jure* effectual without declarator, though *ex equitate* the Lords might have reponed him, but which they could not now do after 40 years though he had not been in possession but about 30 years. 19th December The Lords adhered.

No. 4. 1749, Feb. 10. NIEL M'VICAR *against* COCHRANE of Hill.

NIEL M'VICAR, a singular successor in a superiority of feu-lands, pursued a declarator of irritancy *ob non solutum canonem* on the 250th act 1597, and after several terms had been allowed for purging, at last the feu-right was produced and a defence pleaded, that in the right itself that irritancy was renounced and discharged and that renunciation repeated in the sasine, which was therefore effectual not only against the original superior but against this pursuer. Minto declared the irritancy, but allowed further time to purge, and the vassal now an infant reclaimed, and very ingeniously the argument was pleaded,—and what amongst others determined me, was a distinction betwixt casualties that were *de essentia feudi*, as the *reddendo* in feus and the ward, marriage &c. in ward-holdings,—and casualties introduced only either by paction or statute, as this irritancy that was introduced first by act of sederunt in 1596 to commence only from Whitsunday 1597, and then by act of Parliament 1597; that as to the first there must indeed be a *reddendo*, and yet that may be in a habile way separated from the superiority or modelled and restricted by the investiture, and that the feu-duties may be again feued out or disponed to be held blench, as appears by 243d act 1597, forbidding such subinfeudations *feudifirmarum* by the Crown, and the late question we had betwixt Nasmyth of Ravenscraig, aud I think Hamilton,—and the casualties of ward may all be effectually taxed to what sum they please. But this irritancy is not essential to a feu, on the contrary no feus were subject to such irritancy but by express paction and a clause inserted in the feu, till the act of sederunt, which was so far from being declaratory, that it was only to take effect from Whitsunday