

No 72.

1777. *January 16.*CAMPBELL *against* M'ALISTER.

IN a suspension of a decree of removing, on act of sederunt 1756, against a tenant, the suspender *urged*, That, immediately after the summons of removing had been executed, he had consigned the rents due; and that, nevertheless, the agent for the charger had proceeded in his process, and obtained decret, and used a symbolical ejection of the suspender from the farm; of which, however, he continued in possession. THE LORDS were of opinion, that all irritancies of this nature are purgeable at the bar, and that though decree had passed in absence, and had been extracted, it would be hard, on that account, to subject the tenant to so heavy a penalty; and that, moreover, in the present case, the tenant's consignment ought to be held equivalent to a timely purging of the irritancy; therefore, they suspended the letters.—See APPENDIX.

*Fol. Dic. v. 3. p. 339.*

No 73.

After decree of declarator of irritancy, *ob non solutum canonem*, has been pronounced and extracted, the irritancy cannot be purged.

1792. *July 6.*JOHN BALLENDEN *against* The DUKE of ARGYLE.

THE statute of 1597, cap. 250. enacts, 'That in case it shall happen, in time coming, any vassal or feuer holding lands in feu-farm of us, or any other superior, immediately in feu-farm, to failzie in making payment of his feuduty, by the space of two years hail and together, that they shall amit and tyne their said feu of their said lands, conform to the civil and canon law, sicklike, and in the same manner, as if a clause irritant were specially engrossed and inserted in the said infeftments of feu-farm.'

Ballenden held the lands of Wester Pitgober in feu of the Duke of Argyle, the feu-duty being L. 4 : 14 Scots, together with 10 bolls of barley, and 2 bolls of oats.

He having failed to make payment of the feu-duties during five years, the Duke raised against him, on the above mentioned statute, (his charter not containing any irritant clause,) a process of declarator of irritancy, in which appearance was made for the defender. But, as he failed, nevertheless, to purge the irritancy, the Duke obtained decree.

An action of reduction of this decree was afterwards brought by Ballenden; in the course of which he made offer of full payment of the arrears of feuduties, with interest upon interest, and whatever else should be necessary for affording complete indemnification to the superior; and insisted on the hardship of his property, estimated at L. 3000 Sterling, being forfeited, on account of a demand comparatively so trifling, and which, to the utmost limits of justice, he was ready to satisfy; the political circumstances which gave occasion to this ancient enactment having now undergone a thorough change.