

1805. *December 7.* GORDON, Petitioner.

No. 11.

Conventional irritancy in a tack, on the bankruptcy of a tenant, found incurred, altho' before decree, he had obtained a discharge from his creditors upon a composition of the debts.

OF the date 23d August 1792, Robert Gordon entered into a lease with William Copland, Esq. of Collieston, which contains the following clause :
' Secluding assignees and subtenants of all kinds, also the legal diligence of creditors, as it is hereby expressly covenanted and declared, that this tack shall be at once irritated and made void by the statutory or actual bankruptcy of the tenant, instructed by the appointment of trustees, compounding of his debts, the sequestration of his effects, or otherwise.'

In the end of the year 1803, Gordon's affairs became embarrassed ; his creditors took out a sequestration against him, and a trustee was appointed.

Mr. Copland brought a process of removing against Gordon before the Sheriff of Dumfries, upon the ground, that the irritancy in the lease had been incurred ; and decree was pronounced in terms of the libel.

Two days before obtaining this decree, the creditors had agreed to accept of a composition, which was followed up by obtaining a regular discharge in terms of the bankrupt-act.

A bill of advocation was presented, where it was argued, that no irritancy can be incurred without an action of declarator to establish it ; and that before decree was pronounced in the inferior court, the irritancy was purged by the discharge from his creditors. But it was held to be a satisfactory answer, that the event which the lease provides against has happened ; and the subsequent discharge cannot do away the fact of the previous bankruptcy and compounding of his debts, which were the acts expressly provided against ; *Dict. voce IRRITANCY.*

The bill of advocation was (3d August 1805) refused by the Lord Ordinary ; and a petition against that interlocutor was refused, without answers.

Lord Ordinary, *Meadowbank.*
Clerk, *Pringle.*

For Petitioner, *Reid.*

Agent, *John Thorburn.*

F.

Fac. Coll. No. 229. p. 519.

1806. *February 26.* MURRAY'S TRUSTEES *against* GORDON.

No. 12.

The damage incurred by non-implementation of the stipulation of a lease in regard to cropping, cannot

JAMES MURRAY, Esq. of Broughton, on the 6th and 15th September 1794, entered into a lease with Agnes Gordon, and Thomas Gordon her son, in implement of a minute of tack in September 1789, of the farm of Enrick, and by a subsequent deed (15th December 1794) extended the duration of the tack to fifteen years after Whitsunday 1809, when the previous one was to expire. In these leases certain rules of husbandry were laid down, accord-