

S E C T. IX.

Offer of Payment, if it stops incurring the Irritancy ?

1556. *May 14.* BISHOP of MURRAY *against* LAIRD of KINFAUNS.

No 100.

ANENT the action pursued by the Bishop of Murray against the Laird of Kinfauns, for reduction of a feu, for not-payment of the feu-mails, by the space required of the law, it was *alleged* by the said Laird, That he offered the said mail-duty to them having power to receive the same of the Bishop, being his chamberlain for the time. It was *alleged* by the said Bishop, That it was not enough to offer the mails, but it should have been consigned; which allegiance was repelled by the Lords, and found it was enough to offer the mails, without consignment.

Fol. Dic. v. 1. p. 491. Maitland, MS. p. 119.

. The like was decided 26th July, 1678, Powrie against Hunter,
No 145. p. 2685. *voce* COMPENSATION.

1595. *June 3.* BISHOP of DUNKELD *against* The LAIRD of ARDROSS.

No 101.

IN a cause betwixt the Bishop of Dunkeld and his wife against the Laird of Ardross, the LORDS found a back-tack, during the non-redemption of an annualrent, containing a clause irritant, in case of non-payment of the duty, to be null, in respect of non-payment at the terms set down in the contract; albeit they offered to prove real offer *debito tempore*, because they alleged not that they had consigned the silver.

Fol. Dic. v. 1. p. 491. Haddington, MS. No. 545.

1610. *July 18.* LORD TORPHICHEN *against* The LAIRD of PITFODDELS.

No 102.

MY LORD TORPHICHEN, and his curators, having disposed to the Laird of Pitfoddels the barony of _____ in feu farm, for the yearly payment of four score and nine pounds of feu farm, with a clause irritant, bearing these words, "Proviso tamen quod si duo termini currant in tertium, solutione minus facta, legitima requisitione prius facta, &c. tunc, et in eo casu," &c.; conform to the which provision, my Lord Torphichen sent his procurator to Aberdeen to Pitfoddels, who, before Whitsunday 1609, required him to make payment of the feu-mails 1608. Pitfoddels offered the mails to the procurator, and took instruments thereupon. Thereafter, my Lord of Torphichen intented sum-

A feu being granted, with a clause irritant, it was found not sufficient to offer payment to the procurator, who made requisition; but that the clause irritant was incurred, unless

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.