

1670. *June 21.*

Anent CLAUSES IRRITANT.

IN a declarator of a failyie, or incurring of a clause irritant, through not payment of the annualrent during the space of three terms together, which clause was contained in a contract of wadset; this was FOUND a good defence to purge the failyie,—That he who sought declarator had taken annualrent for terms subsequent to those the failyie whereof was sought to be declared; and that the taking of the said annualrent was an implicit passing from the clause irritant already committed, so that no failyie could be sought but of terms after those for which the annualrent was taken.

So requisition is past from by taking annualrent thereafter: so caducity of a feu, through not payment of the feu-duty by the space of three years, is presumed remitted by the superior's taking the same for years after the feu became caduce; and not protesting for his taking the feu-duties of the years by which the feu was resolved, will not import a discharge of the caducity. *Vide L. 7. D. de lege Commissoria; et Harprechtum ad p. 3, Institu. De Locatione et conduct. No. 479 et seq. Vide infra, No. 81, [16th July, 1670, Chesters against Ker.]* So a minor cannot remove his tenant, taking maill from him for years after the warning; *Craig*, and the authors there cited, *page 204.*

*Advocates' MS. No. 29, 2nd, folio 76.*

1670. *June 22.*RONALD *against* WALKER.

THIS was a reduction (Haddo has interest therein) where two terms were already taken, and where they were calling on their act, for assigning a third. The defender excluded the pursuer with horning, so that he could not speak. Which was found might be done in any part of the process.

*Act. Moir. Alt. Thoires and Seatoun.*

*Advocates' MS. No. 31, folio 76.*

1670. *June 22.*

Anent IMPROBATION.

IN an improbation, the terms being all elapsed, certification was craved, *contra non producta.*

Then ALLEGED,—There could be no certification granted; because there is a note of the writs craved to be produced, of their dates, and the time of their registration.

REPLIED,—Ought to be repelled, because registrate since the defender took terms, at the least since the citation given him in the improbation.

The Lords FOUND such a note satisfied not the production, and therefore granted certification.

*Advocates' MS. No. 32, folio 76.*