

contract was content the lady should eject him without a declarator: and that *beneficium non confertur in invitum*; as, *et volenti non fit injuria*.

REPLIED,—that just as in clauses irritant for not payment of a feu-duty there is a necessity of a declarator, though dispensed with, even so here. ALLEGED, There was a disparity, because in clauses irritant that are provided by an express law of feus, there is necessity for a declarator by reason of their importance, tending to take away heritage: but in conventional clauses irritant, betwixt master and tenants, there is no necessity; but the master may *brevi manu* eject, it being so provided betwixt them, especially where there is no third party lesed by the ejection.

The Lords assoilyed from the ejection, in respect of the contract. It was also alleged that the Countess had accepted of a part of the tack-duty after the committing of the clause irritant; which they found she might do without prejudice of the ejection.

*Act.* Nisbet.

*Alt.* Gilmour.

*MS. folio 51.*

1662. *January 1.*

BRAID *against* JO. BRAID.

ONE Braid pursuing a declarator of escheat on the crime of adultery committed by his brother, Jo. Braid; ALLEGED, No declarator because no escheat for adultery unless the party had been convicted of the crime before an assise in a Criminal Court: *ita est*, there is no doom produced against the defender, bearing him to be convicted; *igitur*, Reply not relevant, because, by the act of Parliament, any man that is found guilty of adultery, his escheat falls; but the defender has not only taken a remission, but has made his repentance before the kirk, and judicially confessed the same.

The Lords found neither his confession before the kirk, nor his repentance for that crime, was relevant in law to make his escheat fall; yea not his remission: and generally found no ecclesiastic confession of any crime relevant to infer any punishment in their body, far less in their estate; lest men, for fear either of their life or estate, should be hardened in their sin, and scared from confession. Which was well decided. *Referente Domino Stair.*

*Act.* Yeoman. *Alt.* Chalmers.

*MS. folio 51.*

1662. *January 1.* Colonel LOUTHIAN *against* THOMAS FAIRHOLME.

COLONEL LOUTHIAN *against* Thomas Fairholme. Mr. Williamsone having drawn a bill on Fairholme to pay L.500 Sterling to Louthian, he did neither accept nor refuse it, but sent his man to him with 1000 merks, as he alleged, in lent money. Louthian, as if he had accepted the bill of exchange, gave him a discharge or receipt in part of payment of the money contained in the bill, which Fairholme's servant brought to him from the Colonel; yet since declares he had