

No. 187. the summons; but allowed some time to the pursuer to purge, and find caution.

Harcarse, No. 1026. p. 292.

* * Sir P. Home's report of this case is No. 64. p. 7234. *voce* IRRITANCY, and No. 288. p. 6076. *voce* HUSBAND AND WIFE.

* * In November, 1683, the Lords found the like between Sir Andrew Dick and Mr. John Burdon, (*infra*)

Harcarse. Ibidem.

No. 188.

1683. *November 30.* MR. JOHN BURDON *against* SIR ANDREW DICK.

In the action of declarator pursued by Mr. John Burdon against Sir Andrew Dick, wherein Burdon concludes, that the back-tack contained in the contract of wadset granted by him to Sir Andrew may be declared null, upon this ground, that Sir Andrew had not made payment of the back-tack duty for three terms; it was alleged by Sir Andrew, That this declarator could not be sustained, there being no irritancy in the back-tack, and that there was no act of Parliament, as in the case of feu-duties, irritating back-tacks. The Lords sustained the declarator, and repelled the defence; but allowed Sir Andrew to purge by payment against Candlemas next.

P. Falconer, No. 72. p. 48.

* * Sir. P Home reports this case :

1684. *March.*—Mr. John Burdon having pursued a declarator against Sir Andrew Dick, for declaring of a back-tack contained in a contract of wadset of the lands of Craighouse, to be declared null, in respect Sir Andrew had failed in the payment of the back-tack duties, for the space of three terms; answered, That the back-tack could not be declared null, because it did not contain a clause irritant, and the act of Parliament declaring that all feuers not paying their feu-duties shall amit and tyne their feus, as if there were a clause irritant in their rights, cannot be extended to back-tacks; acts of Parliament being *stricti juris*, and not to be extended *a casu in casum*. The Lords repelled the defence, and sustained the declarator; but allowed Sir Andrew to purge, by payment, betwixt and the next term.

Sir P. Home MS. v. 1. No. 612.

* * Fountainhall's report of this case is No. 14. p. 7184. *voce* IRRITANCY.

No. 189.

1744. *July 24.* ALEXANDER of Newton *against* JACKSON.

Where a year's rent is due preceding the citation, or even at litiscontestation, it is competent for the master to insist that the tenant pay by-gones, and find