

when they are manifestly irrelevant, as this was ; for it puts the parties to much needless expense, delay, and trouble, which would be prevented by determining obvious relevancies. As also this seemed to be a paction, *causa data, causa non secuta*, for nothing followed on it, neither was there a charter given, nor the price thereof paid ; and *esto* the irritancy had been incurred, Pourie the superior, had raised no declarator thereon ; and though there had been a depending process, the Lords would have found it purgeable at the bar by present payment of the feu-duties, *cum omni causa*, such clauses and advantages sought thereon being odious in law. Therefore the LORDS, balancing their predecessors' decisions in this matter, found the agreement could not be proved by witnesses, and therefore assolvied.

No 236.

Fol. Dic. v. 2. p. 232. Fountainhall, v. 2. p. 466.

* * * Forbes reports this case :

In the action at the instance of the Laird of Pourie against Hunter of Burnside his vassal, the LORDS found a promise to give the pursuer a piece of silver plate worth L 20 Sterling, upon his having passed from the benefit of an irritancy in the defender's right, incurred by his father, not probable by witnesses.

Forbes, p. 291.

1744. July 28.

EDMONDSTON against BRYSON.

In a removing, the tenant objecting that he had not been warned, and the master replying, that he offered to prove, by his oath, that he had agreed to remove without warning ; the LORDS seemed to have no doubt, but that the same was relevant by his oath ; but only " Ordained him to depone before answer."

No 237.
Whether it can be proved by a tenant's oath, that he had agreed to remove without warning?

THE LORDS had determined the counter part of this question, 24th January 1734, Carlisle *contra* Lawson, where a tenant having, after expiry of his tack, removed without a renunciation, in a process at the master's instance for the rent, it was found relevant to prove by his oath, that he had verbally agreed the tenant should have leave to remove without renunciation.

Fol. Dic. v. 4. p. 161. Kilkerran, (PROOF.) No 7. p. 443.

1747. January 14.

The EARL of DUNDONALD against ALEXANDER.

By tack between the late Earl of Dundonald and James Alexander, of date the 29th October 1726, the Earl let to him the lands and mailing of Candraas for 19 years, with a break at the end of the first seven years ; and, by a clause in the tack, the Earl was obliged to inclose the said lands, the said James being obliged to uphold the dykes. For which causes, the tenant became bound to pay the yearly rent therein mentioned.

No 238.
Requisition *inter rusticos* allowed to be proved by witnesses.