

like a blench duty that is due *tantum si petatur*; and therefore the consequence must be one of two, either that the vassal has still his option till requisition is made, and may then pay up the feu-duties even of former years in kind, though with victual of a different year, (which I doubt he cannot do,) and if he could, then the petitioners should have paid all the bygone feu-duties when the decret was taken against them, which seems to have been in spring 1741, when the price was above L.10; or, *2dly*, if the vassal cannot pay the feu-duty 1732 with victual in 1742, then before the requisition one of the members of the alternative became imprestable, and so he is simply liable for the other.

“ I suppose it is an error in writing the interlocutor, when it is said to be for L.10. 7s., for it cannot exceed L.10. But still another question occurs in form. It seems the inferior Court decret is for the current prices, and that being turned to libel, the pursuer was allowed to amend his libel, which he did, and insisted for the L.10. As to the excuse for this, that the Chamberlain did not know the terms of the feu-contract, or did not see it till the suspenders produced it, that will not be sufficient if in form it cannot be done. But I doubt the objection is too late, for he was allowed to mend it by interlocutor 21st July 1741, and it was amended 24th November, and that not complained of till June 1742. But if the matter is entire, though amendments of libels be admitted in ordinary actions, or even advocations, yet I do not see how, after a decret, that libel can be amended in the suspension. We are in use indeed to turn decreets into libels, that is to allow the charger to insist *tanquam in libello*; yet how that libel, *i. e.* the decret, can be amended so as to insert new conclusions in it, I cannot see. *2dly*, How can the cautioner be made liable for more than is contained in the charge, except expenses, in terms of the act of sederunt 27th December 1709, add 23d November 1613?”

ANNAT.

No. 1. 1747, June 9. MAGISTRATES of EDINBURGH *against* WOOD.

THE relict pursued the Magistrates as Mr Wood's widow for the ann. Their defences were, *1st*, That the stipend was payable not out of teinds but by the town; *2dly*, Acts of Council settling a certain stipend in full of the ann. Answered, By the act 1672 the ann is due to the widows of all Ministers without distinction, and so found 8th February 1709, Shiels against Magistrates of St Andrews.* *3dly*, No act of Council could repeal the statute, and the town have uniformly paid the ann of all their Ministers. I repelled the defence, and this day the Lords adhered, *nem con.*

ANNUALRENT.

No. 1. 1733, Nov. 27. CREDITORS of STEWART *against* DUNBAR.

DENUNCIATION at the market cross of Edinburgh makes not sums bear annualrent, when the debtor lives not there.

* Dict. No. 10. p. 466.