

jected *in pignoribus*, and that this wadset of lands was *pignus* or *hypotheca*, which was repelled, and the clause irritant was allowed; neither would the Lords assign a day to the defender, as he craved, to purge the failzie and pay the sum, in respect of the requisition, preceding upon so many days, but decerned in the declarator, seeing the defender offered not instantly to consign the sum at the bar, to be delivered to the pursuer.

Clerk, *Hay*.

*Fol. Dic. v. I. p. 486. Durie, p. 178.*

No 38.

1628. February 7.

PRINGLE *against* KER.

IN a declarator of a failzie betwixt Pringle and Ker of Linton, for not payment of the yearly annualrent, to hear the reversion of the lands given in wadset, be decerned to be extinct; the LORDS decerned, and would not admit the purgation thereof, by offering real payment, after dispute and calling of the process; but they thought that it was reasonable, that if the defender paid the principal sum, with the whole byrun annuals at the term of Whitsunday 1628, now ensuing, that he should be assoilzied; and so ordained some to deal with the pursuer to consent thereto, and the clerk of the process to stay the extracting of any decret to that term.

Clerk, *Hay*.

*Fol. Dic. v I. p. 486. Durie, p. 341.*

No 39.

1631. March 19. DR SCOT *against* DICKSON of Headrig.

A DECLARATOR being sought by the Doctor against the apparent heir of umquhile Robert Dickson of Headrig, who had borrowed 500 merks, to have been paid at Yule last, with provision in case of failzie of the reversion, which the said Doctor had granted him before, for redeeming of the lands of Headrig, wadset to him by the said umquhile Robert, by another anterior bargain, should expire; and for not payment, the declarator being sought, and a creditor of the defunct's compearing, and offering the money instantly to purge the failzie; the LORDS found, that seeing the debtor, who borrowed the money, died before the term of payment, and that there was so little a space, viz. only two months or thereby, which had run since the terms of payment, that the failzie was purgeable, and that the creditor of the defunct might as well be admitted to purge the same by present payment, as the defunct or his heir; for albeit the Lords by an old ordinance had enacted, that they would abide by failzies and clauses of penalties, convened and agreed on betwixt parties in their securities, and decern according thereto; yet that ought only to have

No 40.

It was provided in a bond for money, that the reversion in another security should expire, if the money were not paid at the time appointed. The borrower died before the term; and the money being offered two months after the time, the irritancy was found purgeable.