

No 17.

1665. December 5. CHEISLY *against* CUTHBERT.

CHEISLY charges Cuthbert for his prentice-fee, who suspends and *alleges*, That he was set prentice to him as apothecary, and that he deserted that employment and became a druggist, and thereupon the suspender left him.—It was *answered*, That the breeding him as a druggist was sufficient, and that he now practised as apothecary and chirurgeon.

THE LORDS found this answer not relevant, the suspender being set to him as apothecary, to make drugs, and not as a druggist that buys drugs, as to the time after he changed; but the charger having farther offered to prove, that he constantly in his chamber makes as well as sells drugs, the LORDS found it relevant.

*Stair, v. 1. p. 322.*

No 18.

Debated, whether a clause irritant in, a mutual contract of sale was purgeable, but not decided.

1667. December 14. ROBERT HAMILTON Clerk *against* LORD BALHAVEN.

THE Lord Balhaven having disposed the barony of Beill to John Hamilton, son to Robert Hamilton Clerk, reserving Robert's liferent, with power to dispose of forty chalders of victual at his pleasure, and to set tacks, for what time and duty he pleases, and containing an express provision, that it shall be leisome to Robert to do any deed in favour of my Lord Balhaven, and that the fee shall be burdened therewith; and it is provided, that all rights Robert shall acquire, shall accresce to his son, who is to marry Balhaven's oye, and failing of the son's heirs, mentioned in the disposition, Robert and his heirs are in the last termination. Thereafter Robert enters in a minute with my Lord Balhaven, by which he is obliged to accept an hundred and twenty-nine thousand merks; and therefore obliges himself, and as taking burden for his son, and as tutor and administrator to him, validly, and sufficiently to denude himself and his son of their rights, to any that he should nominate; but here is a clause irritant, that if money or sufficient persons to grant bond to Robert, be not delivered to Robert at Lammas last, and payment made of the money at Martinmas last, that the right by the minute should expire *ipso facto*, without declarator. The minute was put in the Duke of Hamilton's hand, that if these terms were not performed, he should cancel it. Robert Hamilton pursues now a declarator against Balhaven, concluding that he had an absolute and irredeemable right to the land, by his first disposition, and imfeftment granted to him and his son, and that the clause irritant is committed, and that thereby the minute is null; and concludes against the Duke, that the minute was put in his hands upon the terms foresaid, and that he ought to cancel, or deliver the same. The Duke's Advocate suffered him to be holden as confest, but did not produce the