

No 145. duties.—The pursuer *answered* to the *first*, an offer *non relevat* without consignation ; neither was compensation competent against feu-duties, wherein the acknowledging of the superior, by an address of an yearly payment, is more considered than the value of the feu-duties ; neither can clauses irritant, express in infeftments, be purged at the bar ; for they differ therein from the irritancy introduced by law, that these may be purged ; but where the investiture contains the clause ‘ to be null in case of three terms unpaid,’ the same cannot be purged.

THE LORDS did not sustain purging at the bar, nor the compensation ; but found the payment to the pursuer’s servant without contradiction, and the offer *debito tempore*, though without consignation, being now made furthcoming at the bar, relevant to purge the clause irritant, albeit the offer, without consignation, cannot stop the course of annualrents.

Fol. Dic. v. 1. p. 168. Stair, v. 2. p. 642.

* * * Fountainhall reports the same case :

THE LORDS inclined to think, the vassal should not compensate his feu-duties, with any debt his superior is owing him ; but it being a recognizance, it should be offered with humility.

Fountainhall, MS.

* * * Lord Kames cites a case, 17th July 1625, Lord Touch against Fairbairn, from Haddington, importing, that, contrary to the above, compensation had been sustained to purge an irritant clause.—Lord Haddington’s MS. in the Advocate’s Library, does not come down to so late a date. If the case shall be found, it will be inserted in the Appendix relative to this Title. See IRRITANCY.

1687. February 2. ROBERT WEMYS *against* GOODSIR.

No 146.

THE price of spuilzied goods found to compensate, and sist the course of annualrents of a debt due to the spuilzier, from the time of the liquidation, and not from the time of committing the spuilzie.

Fol. Dic. v. 1. p. 167. Harcarse, (COMPENSATION.) No 264. p. 63

No 147.

In a suspension of a charge on a bond, the suspender craved compensation of a sum due to him by

1711. July 10.

IRVINE *against* MENZIES.

CHARLES MENZIES, writer to the signet, being debtor to Mr Alexander Irvine of Saphock in L. 319, by bond, and charged thereon, suspends, that he must have compensation for L. 212, contained in a bill due by Irvine, to which he has right.—*Answered*, Your compensation cannot extinguish my debt ; because I