the irritancy, though Drummore and some others thought otherwise, but they found the irritancy incurred by not paying the moiety due at Martinmas 1733 for crop 1732, because the Ministers prohibition was only for crop 1733 and in time coming.

No. 2. 1737, June 17. CARRUTHERS *against* JOHNSTON.

WE sustained the defence and found the irritancy of the feu not incurred. We thought indeed that the first instrument of offer of the feu-duty in 1696 was good for nothing, but that the superior's always offering to take the feu-duty on condition of the vassal's taking a new charter in the terms mentioned in the prints, and the letter 1722 dispensing with offering the feu-duty at the term, was acknowledging him still vassal and passing from former irritancies *in re tam odiosa*.

No. 3. 1738, Nov. 10. GEORGE STORRIE *against* ROBERT POLLOCK.

THE Lords found that the reverser having used no order of redemption for 40 years after 1695 when the irritancy was incurred, the lands are now irredeemable. This carried by President's casting vote, and Arniston was of the same opinion, who thought that though this was *pactum legis commissoriæ in pignore*, yet the irritancy was *ipso jure* effectual without declarator, though *ex equitate* the Lords might have reponed him, but which they could not now do after 40 years though he had not been in possession but about 30 years. 19th December The Lords adhered.

No. 4. 1749, Feb. 10. NIEL M'VICAR *against* COCHRANE of Hill.

NIEL M'VICAR, a singular successor in a superiority of feu-lands, pursued a declarator of irritancy *ob non solutum canonem* on the 250th act 1597, and after several terms had been allowed for purging, at last the feu-right was produced and a defence pleaded, that in the right itself that irritancy was renounced and discharged and that renunciation repeated in the sasine, which was therefore effectual not only against the original superior but against this pursuer. Minto declared the irritancy, but allowed further time to purge, and the vassal now an infant reclaimed, and very ingeniously the argument was pleaded,—and what amongst others determined me, was a distinction betwixt casualties that were *de essentia feudi*, as the *reddendo* in feus and the ward, marriage &c. in ward-holdings,—and casualties introduced only either by paction or statute, as this irritancy that was introduced first by act of sederunt in 1596 to commence only from Whitsunday 1597, and then by act of Parliament 1597; that as to the first there must indeed be a *reddendo*, and yet that may be in a habile way separated from the superiority or modelled and restricted by the investiture, and that the feu-duties may be again feued out or disponed to be held blench, as appears by 243d act 1597, forbidding such subinfeudations *feudifirmarum* by the Crown, and the late question we had betwixt Nasmyth of Ravenscraig, aud I think Hamilton,—and the casualties of ward may all be effectually taxed to what sum they please. But this irritancy is not essential to a feu, on the contrary no feus were subject to such irritancy but by express paction and a clause inserted in the feu, till the act of sederunt, which was so far from being declaratory, that it was only to take effect from Whitsunday

1597,—and it being I suppose doubted if this Court had sufficient powers for such an act, the 250th act 1597 was made in December without taking the least notice of the former act of sederunt and without any retrospect, not even to the Whitsunday 1697, (a pretty strong indication that our act was not thought of sufficient authority for so strong a thing,) and the act statutes the irritancy sicklike and in the same manner as if a clause irritant were specially engrossed, and our Courts have always taken greater latitude in indulging terms for purging when there was no such clause in the charter and the whole depended on the act of Parliament than where there were such a clause, and as it is not of the essence of a feu and was introduced *in favorem* of the superiors, the maxim holds, that *quilibet potest jure pro se introducto renunciare.* Besides, as the irritancy is enacted sicklike and the same manner as if there were such a clause, as there can be no doubt that where there was such a clause, before that any superior might by a new charter, or in entering an heir, renounce it for ever, or perhaps even in a private discharge, since we had not then any record for publication, in the same way as private reversions were effectual against singular successors, I saw no reason why this could not be effectually renounced, now especially since it had entered the sasine whereby singular successors were safe. President was of a different opinion, and thought that the act of Parliament made it now essential to a feu, and instanced the act 1685 enjoining the heirs to insert the irritant clauses under an irritancy of their right, and figured the case of an entail dispensing with that irritancy, he thought the discharge would signify nothing. In answer to which I noticed first the difference betwixt the two acts, that the act 1597 is in favours only of superiors, but the act 1685 in favours of the whole world who might contract with heirs of entail; 2dly, That in the case supposed, I thought an heir omitting to insert the clauses irritant would not irritate or forfeit his right, but then I thought the creditors contracting with him would be safe. Upon the question it carried to alter Minto's interlocutor, and to find the clause effectual against the pursuer though a singular successor.

JURISDICTION.

No. 2. 1734, Jan. 10. HAY *against* CREDITORS of SIMPSON.

See Note of No. 1. *voce* INHIBITION.

No. 3. 1734, Feb. 19. CORSAN, &c. *against* MAXWELL, &c.

See Note of No. 1. *voce* *ARBITRIUM BONI VIRI.*

No. 4. 1735, Jan. 31. GRAY *against* IRVINE.

THE Lords passed the bill of advocation of the process of confirmation from the Commissaries of Aberdeen, and remitted it to the Commissaries of Edinburgh on account of iniquity.

No. 5. 1735, July 11. RAMSAY *against* THOMSON.

See Note of No. 1. *voce* *FORUM COMPETENS.*