when they are manifestly irrelevant, as this was; for it puts the parties to much needless expense, delay, and trouble, which would be prevented by determining obvious relevancies. As also this seemed to be a paction, *causa data, causa non secuta*, for nothing followed on it, neither was there a charter given, nor the price thereof paid; and *esto* the irritancy had been incurred, Pourie the superior, had raised no declarator thereon; and though there had been a depending process, the Lords would have found it purgeable at the bar by present payment of the feu-duties, *cum omni causa*, such clauses and advantages sought thereon being odious in law. Therefore the LORDS, balancing their predecessors' decisions in this matter, found the agreement could not be proved by witnesses, and therefore assoilzied. No 236.

Fol. Dic. v. 2. p. 232. Fountainhall, v. 2. p. 466.

*** Forbes reports this case:

IN the action at the instance of the Laird of Pourie against Hunter of Burnside his vassal, the LORDS found a promise to give the pursuer a piece of silver plate worth L 20 Sterling, upon his having passed from the benefit of an irritancy in the defender's right, incurred by his father, not probable by witnesses.

Forbes, p. 291.

1744. *July* 28. EDMONDSTON *against* BRYSON.

No 237.
Whether it can be proved by a tenant's oath, that he had agreed to remove without warning?

IN a removing, the tenant objecting that he had not been warned, and the master replying, that he offered to prove, by his oath, that he had agreed to remove without warning; the LORDS seemed to have no doubt, but that the same was relevant by his oath; but only "Ordained him to depone before answer."

THE LORDS had determined the counter part of this question, 24th January 1734, Carlisle *contra* Lawson, where a tenant having, after expiry of his tack, removed without a renunciation, in a process at the master's instance for the rent, it was found relevant to prove by his oath, that he had verbally agreed the tenant should have leave to remove without renunciation.

Fol. Dic. v. 4. p. 161. Kilkerran, (PROOF.) *No 7. p. 443.*

1747. *January* 14. The EARL of DUNDONALD *against* ALEXANDER.

No 238.
Requisition *inter rusticos* allowed to be proved by witnesses.

BY tack between the late Earl of Dundonald and James Alexander, of date the 29th October 1726, the Earl let to him the lands and mailing of Candraas for 19 years, with a break at the end of the first seven years; and, by a clause in the tack, the Earl was obliged to inclose the said lands, the said James being obliged to uphold the dykes. For which causes, the tenant became bound to pay the yearly rent therein mentioned.

No 238. By virtue of this tack, the tenant entered into the possession, and, without taking the benefit of the break, paid his rent during the Earl's life. But being charged at the instance of the present Earl and his curators, for the crops 1739 and 1740, he suspended on account of the damages he had sustained by the Earl's not having inclosed the lands, as he was bound, which he valued at L. 100 Scots yearly. And, at discussing, on 2d July 1741, the LORD ORDINARY, "In respect the tenant had possessed the ground from the year 1730, notwithstanding his being free at the end of the first seven years, and had made no requisition to have the ground inclosed, but paid up his rent, in terms of the tack; repelled the reason of suspension, and found the letters orderly proceeded; but, in regard the suspender does now insist to have the ground inclosed, found that the charger ought forthwith to inclose the same."

Against this interlocutor the suspender reclaimed; and, on advising petition and answers, on the 26th of November 1746, it appeared that the charger had obeyed the Ordinary's appointment for inclosing the ground; and, as to bygones, no regard was had to what was pleaded by the suspender, that, *esto* he had made no requisition, the Earl was liable; for, though where a particular day is fixed for performance, dies interpellat pro homine; and though quod sine die debetur, presenti die debetur, so that presenti die peti potest, yet till requisition is made, dies non venit. But all the question was, How far he could be allowed to prove by witnesses, that he had required the late Earl, which he averred he had done?

As to which, the rule was agreed to be, that wherever requisition is necessary, if there be no instrument taken on it, it can no otherways be proved than by the writ or oath of party; agreeable to what we have in Stair's Instit. tit. Accessory Obligations. Nevertheless, it was doubted, whether, in this case, there might not be an exception on account of the rusticity of the party; and, therefore, he was, before answer, "Ordained to give in a condescendence of the time when such requisition was made, and of the witnesses by whom he proposed to prove it;" and, of this date, he was "Allowed a proof before answer."

Fol. Dic. v. 4. *p.* 161. *Kilkerran*, (PROOF.) *No* 9. *p.* 444.

1749. *June* 3. CADDEL *against* SINCLAIR.

No 239. A servant hiring himself for more years than one, how to be proved?

A SERVANT'S hiring himself for more years than one can only be proved by writ; and although his hiring for one year may be proved by witnesses, yet if the writ by which he engaged for more years be null, it will not be competent to supply it even by his oath, as the nullity of a written contract cannot be supplied by the party's oath upon the terms of the agreement. But if, upon such null contract, the servant shall have entered to his service, then the bargain being proved by his oath, *res non est integra*, to this effect, to oblige him to serve for one year, (but no longer,) as so far he could have bound himself by a verbal contract.