

No 31.

*ed*, The administration of the tack, as well as the profits, must in all events be in the husband, which is virtually superinducing another tenant; and this is a virtual assignation that cannot be reduced; and therefore nothing is left but to reduce the tack itself. And this is the very reason given by Lord Stair, Sect. 26. above cited. THE LORDS reduced the tack. See APPENDIX.

*Fol. Dic. v. I. p. 485.*

---

S E C T. IV.

Whether Negligence in preserving the Subject infers Irritancy.—Whether Irritancy takes place where the Condition becomes imprest-able.—Irritancy not a Voidance of the Right, making it voidable only.

1540. *May 12.* The KING *against* LAURENCE WARDROP.

No 32.

THE Kingis landis beand set in few for ony cause or causis, and speciallie for policie to be usit and maintenit within the realme, amang his Hienes liegis, gif he to quhome the samin was set, his airis or successouris, destroyis the woddis, growand treis, housis, or biggingis upon the ground, he foirfaltis and tynis his few, with all clame of right quhilk he had in and to the saidis landis; because he fulfillit not the punctis and clauses contenit in the said infestment, bot did the contrare of the samen, aganis all policie and causis quhairfoir the saidis landis were set in few.

*Fol. Dic. v. I. p. 485. Balfour, (FEUS.) No 5. p. 171.*

No 33.

Lands were mortified to a convent, on condition of saying masses for the soul of the donor. Although such masses came to be prohibited by law, the irritancy took place.

1592. *June.*

COCKBURN *against* ———.

COCKBURN, foirgranschir to the Laird of Clerkington, having a bond of the umquhile Grey-friars of Haddington, bearing, that the Friars and their successors were bound and obliged to the pursuer's heirs and successors, to say so many masses, for the souls of the said Laird and his predecessors; and, in case they fail thereof, they should renounce and quit all claim, right, and interest, they had to a piece of land, the Friar-croft; and so pursued the title and right made by the friars, to some indwellers and burgesses of Haddington, to be reduced, and the Laird of Clerkington repute as heir to his foirgrandschir, according to the tenor of the said bond. It was *excepted* against the reason of the summons, That the cause of the fulfilling of the said bond, which was to say so many masses, stood not by them, by reason of the alteration of the religion,

*qui fuit casus fortuitus et ad quod nemo tenetur de jure*; and as the Papist's religion was abrogated by the laws of the country; and the sincere and true religion planted; and as the hail kirklands were annexed to the Crown by act of Parliament; therefore the same being done *ex vi et necessitate legis*, the fulfilling of the said bond, by saying and singing of mass, could not be put to the defenders' charges.—THE LORDS found, that the reason of the summons was relevant, and repelled the exception; albeit the defenders alleged thereafter that they had other titles, and verification of the said croft to the said friars.

*Fol. Dic. v. I. p. 486. Colvil, MS. p. 469.*

No 33.

1610. November 8.

SETON against SETON.

ANE tack sought to be reduced, *propter non solutum canonem*, be the space of many years, will not be reducit fra the time of the first failzie, *sed tantum a tempore litis motæ.*

*Fol. Dic. v. I. p. 486. Haddington, MS. No 2175.*

No 34.

1628. January 29. D. of LENOX against HOUSTON.

IN a removing by the Duke of Lenox against Houston, for removing from the house and yards of Inchinnan, pertaining to the Duke, the LORDS found a rental made by umquhile Lodovick Duke of Lenox to this defender, whereby he was rentalled kindly tenant to the Duke of Lenox and his heirs in some acres of land, and also in the keeping of the said house of Inchinnan, to be a sufficient title to exclude the pursuer from this action of removing of him from the said house, wherein he was rentalled keeper as said is; and the exception founded upon the said rental was sustained, albeit it was *replied*, that the same rental was no title to exclude the master from the use of his own house, neither was a rental of that tenor, viz. appointing one to be keeper of the house, of that force as to give a warrant to the receiver, to keep the same longer than the granter pleased; seeing rights to keep castles and houses are constituted by securities of another nature, and more valid in law than such rentals can be of; likeas he *replied*, that the house and yards are all decayed, by the neglect and abuse of this defender, whereby he had fallen from the benefit of the rental; all which was repelled, and the exception sustained. See TACK.

No 35.

Removing was attempted of a kindly tenant of a house, because he had allowed it to fall into decay. Assoiled.

Act. Hope et Burnet.

Alt. ———.

Clerk, Hay.

*Fol. Dic. v. I. p. 485. Durie, p. 334.*