

- No 12. duty of the back-tack, all the terms wherein the failzies are alleged to have been omitted, he cannot seek declarator of the failzie, seeing a part of the back-tack duty was paid termly by the said mails of the fore-booth, which the Lords found relevant.

Auchinleck, MS. p. III.

- No 13. 1680. July 27. The EARL OF MARR *against* FRASER of Techmurie.

THE LORDS found a clause irritant in a feu *ob non solutum canonem* not incurred by many years rests, but allowed a time to pay and purge, because the *reddendo bore si petatur*, and it was never demanded till this declarator and reduction.

Fol. Dic. v. 1. p. 484. Fountainhall, MS.

- No 14. 1683. November 29. Sir ANDREW DICK *against* ———.

‘THE LORDS found, a back-tack in a wadset-right became null, and (irritancy) incurred through not payment of the back-tack duty by the space of two years together, like a feu by the 250th act of Parliament 1597; though it contained not the usual clause irritant, that in case two terms run in the third unpaid, then it should expire; and found that irritant clause equally inherent *de jure* as if it were expressed; but found it purgeable at the bar, or before extracting, by paying the bygone back-tack duties.’ The Lords sometimes now allow them to be instantly purgeable, even where the writ contains an express clause irritant *in gremio*. They had decided the same with this before in the case of tacks, where two years duty runs in the third unpaid.

Fol. Dic. v. 1. p. 483. Fountainhall, v. 1. p. 246.

SECT. II.

Conventional Irritancy *ob non solutum canonem*.

- No 15. 1611. March 9. Mr GEORGE SETON *against* His Brother JAMES.

IN the action pursued by Mr George Seton against his brother James for reduction of his tacks *propter non solutum canonem*, the LORDS found *quod moro*