

- 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.*

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## 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*