

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 imprestable.—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,