

nam et intellectum stipulationi conventionali, et semper tenendum est; quod ait Prætor, L. 7. § 7. D. De pactis; and so the failzie that was made by reason of the clause irritant *in pacto convento post caducitatem* could not be purged by any offer thereafter, except the parties would assent to the same; and, as was reasoned among the Lords, albeit in fens and heritable titles, the Lords are loath to retreat and reduce the same, *et aliquando oblatione, consignatione, et deposito, purgationem moræ admittitur*; yet into tacks and assedations, when any clause irritant of not payment is inserted in the same, they decern according to the same, *et instar mentem contraventium; nam de jure et praxi nostra*, all tacks are *strictissimi juris*. THE LORDS found, by interlocutor, that by reason of the clause irritant *non obstante obligatione et moræ purgatione* the tack fell.

Fol. Dic. v. L. p. 488. Colvil, MS. p. 412.

1587. March.

BISHOP OF ORKNEY against SINCLAIR.

THE bishop of Orkney pursued one Sinclair to hear and see a tack of certain teind sheaves set by him to be reduced by reason of a clause irritant, that if the conductor, by the space of 40 days after the term, failed in not payment, the tack should expire. It was answered, that the most the bishop could crave owing to him, was but the payment of one term, and so *de æquitate potuit purgari hæc mora*, and it was a hard manner, *et summum jus, quæ fuit summa injuria* to reduce a nineteen year's tack for not payment of one term. The matter being reasoned among the Lords, some were of opinion *ut supra, quod contractus ex conventionione legem arripit, est in conventionibus in quibus dies et pæna adjecta est, non admittitur purgare moram*; L. 84. D. De verborum obligationibus; *et supra, inter Rhiscardine et Sheriff of Murray* No 55. p. 7225., and so by reason of the clause irritant expressed in the tack, the party could not be heard *ad purgandam moram*, albeit it was but *mora modica*; nevertheless, the Lords would not the tack should reduce.

Fol. Dic. v. 1. p. 488. Colvil, MS. p. 424.

* * The like was decided 9th March 1611, Seaton against Seaton, No 15. p. 7184.; and 26th July 1678, Pourie against Hunter, No 145. p. 2685., *vide* COMPENSATION.

1605. June 7.

WARDLAW against HEPBURN.

WARDLAW of Curriehill pursued the Laird of Riccarton to hear and see his feu farm infesment of Riccarton, held by the said Patrick Hepburn of the

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No 56.

No 57.

A tacksman was allowed to purge at the bar, where it was pactioned that the tack should be null upon failure of payment of a single year's rent.

No 58.

The statuteable irritancy *ob non solutum canonem* found not