

No 77. have been found not purgeable, as appears by Spottiswood, *voce* Removing, and *voce* Rentals, (*See* APPENDIX.) And if this defence were good, that it was purged before any process quarrelling it, then it might have defended Shemei against Solomon, who had a tack of his life, on condition he should not go out of Jerusalem, now he had returned and purged the irritancy; yet that did not save him, but he was put to death. And such irritancies cannot be declared till they be committed and incurred, so the removing them out of the way at that time can never excuse the prior delinquency. THE LORDS thought all the three sorts purgeable before they were quarrelled; and suppose the case of a tailzie, under an irritant clause, not to contract debt, if it be paid before the next substitute heir of tailzie quarrel it, it can never be a ground for tinsel of the property; and even so in a recognition, if one alienate and take on debt above the half of the ward-lands, and disburden them by payment before the gift, the LORDS would not find the recognition incurred; even so here, the irritancy was purgeable, and therefore the LORDS assoilzied from the reduction of the tack and the removing, and refused to declare the irritancies incurred in this case.

Fol. Dic. v. 1. p. 489. Fountainhall, v. 2. p. 471.

S E C T. VIII.

Conventional Irritancy in Bargains, Contracts, and Entails, if purgeable.—Irritancy relative to *legatum liberationis*, when purgeable.

1609. July. EARL OF MORTON *against* DOUGLAS.

No 78.

IN an action pursued by William Earl of Morton against Hugh Douglas of Billbruckt, to hear and see a bond made by his Lordship, whereby he has promised to set a tack of the mill of Morton to the said Hugh, providing he paid to him 500 merks at a certain term, to be rescinded and declared ineffectual, because Hugh Douglas had not paid the said sum at the said precise day, the LORDS found the bond null, and to be expired, notwithstanding there was no clause irritant contained therein; and that notwithstanding Hugh offered to prove, that within ten days after the term he had really offered the money.

Kerse, MS. fol. 108.