for the future in a certain Case as if something be done or omitted by the Receiver. This so called from the Latin irrito to make void: Because it makes void the Right affected therewith in such an Event: This Answers to pactum legis commissoriæ in the civil Law, so termed because thereby the Right annulled to him in whose favour the Irritancy is conceived, and becomes his. Irritancys are sometimes implied in the Nature of the Right vid. Supra. Pag. 532. at some times expressly. The Difference arising from the Failure of a Right, and an Irritancy is explained in another Place vid Infra Pag. 657. 658. As where it is provided in Ligiance that the Heir by contracting Debt or affect the Estate should forfeit his Right as next Member of Ligiance: It is not the bare contracting of Debt, nor even if it be made constat upon the Ligiances Lands, that makes the Irritancy to incur, but the Declarator of Contravention at the Instance of the Lord Advocate for his Majesties Interest, and Escheat already fallen in July 1722 Scot of Gala contra personal Representatives of Sir James Scot of Gala.

By the civil Law pactum legis commissoriæ in pignoribus that if the Debt be not paid at or before a precise Day, the Pledge should not be thereafter redeemable is annulled as unjust and usurious or inhumane. But a Clause irritant in a Contract of Sale whereby it is agreed that if the Price be not paid before a certain Day the Bargain shall be void, is allowed and of Force l. 3. C. de pact. inter l. 2. C. de leg. commiss. The Reason of the Difference is because the Value of a Pledge doth commonly far exceed the Sum it is given in Pledge for, and Creditors should not take so great Advantage by the Necessitys of their Debtors: Whereas a Clause Irritant in a true Sale for a competent Price, is not penal or prejudicial to the Party against whom the Benefit thereof is taken. Again the Doctors of the civil Law distinguish, whither the Seller reserved in it to himself a Power to redeem within a certain Time the Subject disponed, or bound it to a certain Time with an Obligation upon the Buyer to sell it back again to him: Holding that in the first Case the Power of Redemption expired and became void if not exercised within the Time agreed upon; and that in the latter Case, Redemption may be claimed after expiring of the limited Time. Because in the first Case the Faculty was restricted to a Time, and in the latter the Sale only was made à a Time cum pacto de retrovendendo, whereof this was all the Effect, that during that Time the Seller could not redeem or disturb the Buyer's Possession by offering him his Money, Carpzov. jurisprud. forens. part. 2. Const. 1. Def. 8 & 9.

Our Custom in this Matter hath not been always the same. Of old such Clauses Irritant were sustained in Scotland. By an Act of Sederunt 27 Novem. 1592 it is declared, that the Lords would decide in all Clauses Irritant according to the expresse Words. Which was not understood of annulling Securities upon Irritancys in other Writs relative thereto, as a Clause in a Bond of borrowed Money, that if it were not paid at a certain Term, a Reversion of Lands formerly wadset by the Debtor in the Bond conform to another Bargain should expire, but concerned only the voiding Securitys upon Irritant Provisions therein inserted 19 March 1631 Dr Scot contra Dickson of

pleading.

pleading. And even in that Case the Necessity of the Debtor was either modified one restricted to the past Interest. In ays of Double Love the not purchual Performance in a short allowed on a certain Receipt or a Rigour thereof was mitigated by superse[illegible] Extract of the Lords at some time or indulging a competent time [illegible] Inst. Lib. 4. Tit. 18. §. 14. pr. Lib. 4. Tit. 6. §. 7.

But later Decisions [illegible] gratuitous Resignations in Irritancys, Reversions [illegible] Irritancys in Sales, Retract Irritancys in Sales for a competent Price, and Irritancys in those where the Price is always made to the Superior Erie Seaf. Lib. 2. Tit. 6. §. 16. Sande Lib. 3. Def. 9. pr. Lib. 2. Tit. 6. §. 6. Lib. 4. Tit. 5. §. 7. Tit. 18. §. 4 & 5. [illegible] Irritancys in the Reversion of Wedges, Wadsets and Sales [illegible] Pretext of Inhibitions void as sale, or gratuitous Deeds to be purged after they are incurred before the Irritancy is declared: the it bear a Renunciation of all Objections, and to be Effectual without Declarator: But Irritancys in true Sales for a competent Price, whether annulling the Bargain if the Price were not paid certain Day, or reserving a Faculty of Redemption for not restoring the Price within such a Day to stand pro non scripto, or to incur a according to the Nature of the Right without any Liberty to purge. The Irritancy in a Reversion of a Disposition for a competent Price, bearing there necessarily [illegible] proper Money without Borrowing, was indeed found not purgeable, but the Lands redeemable after the Lapsing of the Term in the Reversion at the instance of the Right of Property from the Seller to whom the Reversion was conveyed 17 January 1679 Beatson contra Harrower. And a Person having some Months after his purchasing a piece of ground, granted Back-Bond to the Disponer, allowing him and his eldest Son to redeem the Subject disponed within two or three Years at furthest by a Repayment of the Price, and no Offer to redeem having been made for the Space of four Years thereafter while the Son lived: The Subject was found to become irredeemable, albeit the Disponer and his eldest Sons Heir used an Order of Resemption before any Declarator of the Irritancy 28 July 1709 Stewart of Blackhall contra Stewart of Carsewell. Because the Back-Bond so long after the Disposition, not being pars contractus, the Reversion behoved to have been claimed in the specifick Terms thereof by the Seller and his eldest Son, to whom it was granted jointly within the Time limited in the Back-Bond. But Lands disponed for a competent Price upon the Buyer's obliging himself by Back-Bond to redispone them to the Seller, in Case he repaid the Price within a precise Time, were found redeemable several Years after Lapsing of the Term prefixed for using Redemption before Declarator or Extinction of the Reversion: Albeit the Reverser had after the said Term purchased for Part of the Price and the Completment of a Debt promised to his Wife at the Making of the Bargain 15 Feb. 1706 Young and