

S E C T. III.

Legal Irritancy upon assigning or subsetting.—Rental Rights.—
Whether Marriage be such an Assignation as to infer Irritancy?

1569. July 8.

The KING'S ADVOCATE *against* JOHN WINTON & ALEXANDER BARCLAY.

No 19.
Feu reduced,
if the feue
dispone, con-
trary to the
tenor of his
infestment.

LANDIS set in feu to ony man and his airis, for payment of certane zeirliche few-maill, with expres provisioun contenit in the infestment, that it sall not be leasum to the fewar, his airis or assignayis, to annalzie the saidis landis in quhole or in part, without consent and licence of the settar of the few, his airis or successouris; gif thay mak alienatioun utherwayis, thay to tyne and forfault the few-ferme and heritabill richt of the saidis landis; gif the said fewar, or ony of his airis, cumis in the contrare of the said provisioun and restrictioun, the said settar, or his airis, hes just actioun and titill for reductioun and recognitoun of the said few.

Balfour, (FEUS.) No. 9. p. 172.

1610. February 23.

HAMILTON *against* BOYD.

No 20.

HE that has a rental of lands, and dispones the same in hail or in part, or makes subtacksmen thereof, amits so much of the rental as he assigns, or sets subtack of.

Fol. Dic. v. 1. p. 484. Haddington, MS. No. 1816.

. Kerse reports this case.

IN an action of removing, pursued at the instance of John Hamilton against Boyd, it was *alleged* for Boyd, That he could not be removed, because he had rental set to him during all the days of his lifetime. To the which it was *answered*, That he had tint his rental, in so far as he had made assignation thereof to a third person; at least he had set the tack of the said lands to subtenants. In respect of the which answer, the allegiance was repelled; and it was found, that the rental fell not only by the assignation, but also by the subtacks made of the said lands in hail, if there were tacks set of the hail; and in part, in so far as the same was set in tack.