

No 74.

remove. It was *replied*, That it was provided in the rental, that, if he gave his title of this rental to any other, without consent of the Abbot, he should tyne his tack and rental *ipso facto*, without farther process. It was *answered* That, notwithstanding that provision, he behoved first, by way of action, to be declared to have tint his tack, for the cause foresaid. It was *replied*, That the said nullity of the tack might be received by way of exception, likeas the nullity of the law, and be null by consent of both the parties. THE LORDS found, by interlocutor, that he could not be decerned to remove, before that he was declared, by way of action, to have tint his tack.

*Maitland, MS. p. 209.*

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NASMITH *against* KINLOCH.

No 75.

IN an action betwixt John Nasmith and John Kinloch, the LORDS found, that the taking of annualrent, after the failzie, purged the clause irritant, a-nent the expiring of the reversion, in case of not-payment at a precise day.

*Kerse, MS. fol. 109.*

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1693. December 15.

BAILLIE of JERVISWOOD *against* The TOWN of LANARK.

No 76.

A clause in a feu charter, obliging the heir to enter within year and day of his predecessor's death, under the penalty of losing the feu, found purgeable before declarator.

THE LORDS repelled their reasons of suspension, on report of Lord Mersington, and decerned them to grant a charter, and enter him in that land held of them. The reason was, that, by his charter, he was bound, within year and day of his predecessor's death, to crave an entry, under the pain of losing the feu, and he had suffered sixteen months to elapse after his restitution.—THE LORDS found this irritancy purgeable, there being no declarator raised by them upon his failzie. The 2d was, That they had paid his proportion of cess for these lands, and they were not bound to receive him as vassal till he refunded them. THE LORDS found this was not liquid, and no part of the *reddendo* of his holding, and so could not stop his entry, reserving action for the same, as accords. The third was, That he had committed purprision, and amitted his feu in tilling up a high way, which he was obliged by his charter to give them to a croft of land called the Well-eyes. He *alleged*, He had prescribed immunity from that servitude. THE LORDS found this reason not competent *hoc loco*, but reserved it to them, when they should insist in a declarator.

1694. February 28. IN the question between George Baillie of Jerviswood, and the Town of Lanark, about entering him in a piece of land he held of them, (mentioned 15th December 1693), the LORDS found they could not dispense