

No 36.

1729. *January 23.* DUKE OF ROXBURGH *against* KER.

IN an action for voidance of a tack upon this ground, that the woods which the tacksman had expressly bound himself to take care of, were neglected or destroyed; *answered*, This is not a statutory irritancy, nor made an irritancy by the tack, and therefore can only infer an action for damages; which the LORDS found relevant. *See* APPENDIX.

*Fol. Dic. v. i. p. 485.*

---



---

SECT. V.

*Pactum legis commissoriæ in pignoribus.*

No 37.

1611. *February 19.* BARSKEOCH *against* GARTHLAND.

BARSKEOCH's father having contracted with Garthland for the wadset of land under reversion, and upon provision, that if he should make requisition for his principal sum, the reversion should expire, if the requisition could not be obeyed by payment of the principal sum and byruns; Barskeoch's heir sought declarator of expiring of the reversion for a failzie committed by Garthland for not obeying a requisition. Garthland offered *purgare moram* by present payment of the principal and byruns. THE LORDS found *quod mora illa non erat purgabilis*, but that the reversion was expired.

*Fol. Dic. v. i. p. 486. Haddington, MS. No 2165.*

No 38.

A wadset had been declared irredeemable, if not redeemed upon a premonition of 90 days before the term. The clause irritant was sustained, and the Lords refused to assign a day to purge it; the party not offering instant-

1625. *July 19.*NAIRNE *against* NAPER.

IN an action of declarator at the instance of Nairn *contra* Naper, whereby the pursuer craved the right of the land, wadset to him upon a certain sum, under reversion, to be declared to pertain to the pursuer heritably and irredeemably, because of a clause irritant contained in the contract, that if that sum were not paid to the pursuer at any term whereat he should seek payment, after requisition made to the defender by him, upon ninestore days preceding the term, that then the lands, in case of failzie, to pay at the term, should pertain heritably and irredeemably to the pursuer; which action and clause irritant were sustained, albeit it was *alleged*, that *pactum legis commissoriæ* was re-