No. 19. JOHN HISLOP, Appellant.—*Moncreiff—Maconochie—Whigham.* DUKE of BUCCLEUCH, Respondent.—*Gifford—Mackenzie.*

Entail—Lease—Purgation.—Held (affirming the judgment of the Court of Session,) that where it had been declared, after the death of an heir of entail, that a lease granted by him was beyond his powers, it was struck at by the irritant clause, and purgation was inadmissible.

July 2. 1821.

2D DIVISION. Lords Craigie and Cringletie.

THIS case was connected with the preceding one, being one of the leases of the validity of which the Executors of William late Duke of Queensberry had brought a declarator. In 1787, his Grace had let to the late John Hislop, the father of the appellant, a lease for 19 years, at the previous rent of £30, and a grassum of £26. In 1797 Hislop renounced that lease, and obtained a new one for 19 years, at the same rent, and a grassum of £28; the Duke at the same time binding himself to renew the lease for 19 years, in every year of his own life, if required. On the 30th of December 1803, the lease of 1797 was renounced, and a new lease for 19 years was granted at the former rent, without any grassum. Of this lease, among others, the Duke of Buccleuch, the succeeding heir of entail, brought a reduction, on the ground, inter alia, that it was let 'evidently in diminution 'of the rental, no regard being had to the repeated grassums 'that had been received by the said Duke, which being in fact 'additional rents during the whole periods of the previous leases, 'the rate of annual value of these grassums ought of course to 'have been added to the old rent.' The Court, on the 7th of March 1816,* having assoilzied from the reduction, the Duke of Buccleuch entered an appeal, and a remit was thereupon made by the House of Lords, similar to that noticed in the preceding case. The Court, on the 5th of February 1818, again assoilzied, and the Duke thereupon entered another appeal; on advising which, the House of Lords, on the 12th of July 1819, 'Ordered and adjudged that the said interlocutor complained of 'in the said appeal be, and the same is, hereby reversed: And 'the Lords find that the late Duke of Queensberry had not 'power, by the deed of entail founded upon by the parties in 'this cause, to grant the tack in question in this cause, the same 'having been granted upon the surrender or renunciation of a

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* See Fac. Coll. Vol. 1815-1819, No. 44, where it is stated, 'that the Court were 'unanimously of opinion that the leases could not be set aside on any of the grounds of 'reduction.'

'former tack then unexpired, and which former tack had been granted by the Duke at the same rent, and also for a sum or price received by him; and the said tack in question, therefore, having been granted partly in consideration of the rent reserved thereby, and partly in consideration of a price or sum before paid to the said Duke himself, and of the renunciation of the said former tack; and find, therefore, that this tack of the 30th of December 1803 ought to be considered, in this question with Hislop, as let with diminution of rental, and not for the just avail: And it is further ordered that, with this finding, the cause be remitted back to the Court of Session in Scotland, to do therein as is just and consistent with this finding.' July 2. 1821.

When the case returned to the Court of Session, Hislop offered to purge the irritancy in the mode proposed by the executors in the preceding case. The Court, however, sustained the reasons of reduction, and reduced the lease; and the House of Lords 'Ordered and adjudged that the appeal be dismissed, and 'the interlocutors complained of affirmed.'

Appellant's Authorities.—1. Ersk. 8. 14; 1. Stair, 13. 14; Stewart, Feb. 1. 1726, (7275); Gordon, July 13. 1748, (2336, and Elch. No. 33. Tailzie); Price, July 6. 1760, (not rep.); Rosses, Nov. 18. 1766, (7289); Hope's M. P. 403. 407. 408; 3. Ersk. 8. 29; Kilk. 445; Gilmour, Mar. 6. 1801, (No. 9. App. Tailzie.)

J. CHALMER,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No.* 38.)

Mrs. NASMYTH and Others, Appellants.—*Scarlett—Lushington.* No. 20.
Dr. HARE and Others, Respondents.—*Romilly—Mackenzie.*

Testament.—Held (reversing the judgment of the Court of Session,) that a testament executed by a Scotchman who had long resided in India, and to which a seal had been attached, but which had been cut off, was revoked, although he was domiciled in Scotland, and the deed was holograph of, and subscribed by him.

DR. JAMES NASMYTH, a native of Scotland, went early in life to India, where he remained till 1798. He then returned to Scotland, where he resided permanently at Hope Park near Edinburgh, but died in London, while on a visit, in 1813. His repositories at Hope Park were then opened, and the contents examined and inventoried, in virtue of a warrant of the Sheriff, in presence of the agent of the nearest of kin, of one of the assistants of the Sheriff Clerk, and other persons appointed by the Sheriff. In a July 27. 1821.

2D DIVISION. Lord Craigie.