

No. 35. 1627. *July 20.* L. LANGTON *against* Her TENANTS.

Alleged, She is rentalled in the lands libelled by the pursuer, likewise her rental thereof is inserted in the Laird's rental-books of the parish. Admits the allegiance; and she protested for incident against the havers of the rental books for proving thereof.

Clerk, *Durie.*

*Nicolson MS. No. 328. p. 229.*

No. 36. 1628. *January 29:* DUKE of LENOX *against* HOUSTON.

A rental, wherein the defender was received as kindly tenant to the Duke of Lenox and his heirs, in some acres of land, and also in the keeping of the house of Inchinnan, was sustained to defend against a removing from the house; though it was pleaded for the pursuer, That the rental could be no title to exclude the master from the use of his own house, and also, that the right to be keeper of a castle or house is a feudal right, which must be constituted by infeftment.

*Fol. Dic. v. 2. p. 417. Durie.*

\* \* This case is No. 35. p. 7201. *voce* IRRITANCY.

No. 37. 1628. *July 10.* LA. MAXWELL *against* TENANTS.

In a removing, Lady Maxwell against her tenants, the defender alleged, That he bruiked the lands libelled by tolerance, allowance, or oversight of the rentaller, who was rentalled in the lands libelled by the pursuer, during his life-time, and who was in life at the time of the warning. This exception was found relevant, albeit the pursuer replied, That bruiking, without any title, could not defend the excipients, tolerance, allowance, or oversight, not being *nomina juris*, which could maintain the excipients, the same being no valid right; which reply was not respected, and the said tolerance, allowance, or oversight, was found by the Lords ought to be proved, either by writ, or oath of the rentaller by whose oversight and permission he alleged that he bruiked, and found it proveable after that manner.

*Act. Douglas.*

Clerk, *Hay.*

*Durie, p. 385.*

\* \* Spottiswood reports this case :

The old Lady Nithsdale pursued a removing against her tenants of the Mearns. Alleged, Absolvitor, because they were tenants to N. who was rentalled in these