

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

lands by the Lady, during both their life-times. Replied, Not relevant, except they did condescend how they were tenants, if by payment of mails and duties, or otherwise. Duplied, They were tenants by tolerance, or allowance and oversight. This was found relevant to defend the tenants from removing, to be proved by writ or the oath of the rentaller by whose tolerance or allowance and oversight they possessed.

No. 37.

1628. *July 12.*—In this same action, it being replied by the Lady, Not relevant to say they were tenants to a rentaller, (whose right was only personal), unless they would allege that the rentaller had power to place sub-tenants. The Lords found the allegiance relevant, notwithstanding of the reply.

Spottiswood, p. 284.

* * * Auchinleck also reports this case :

The Lady Nithsdale pursues removing of some tenants of the Mearns. It was excepted, That they could not be decerned to remove, because they bruiked by tolerance and allowance of them that had rentals set to them by the Lady. It was replied, That the words, " brooked by the oversight and allowance of the rental-
lers," were not relevant, because there were not *nomina juris*. The Lords found the exception relevant to be proved by writ or oath of the party, viz. the rental-
allers.

1628. *July 15.*—Rentallers may not put subtenants in possession, except they have an express right contained in the rental to make subtenants.

Auchinleck MS. p. 231. & 202.

* * * Durie's report of the latter part of this case is No. 94. p. 2228. *voce CITATION.*

1726. *December 28.* ————— *against* RENTALERS of LOCHMABEN.

No. 38.

The rentalers of Lochmaben had obtained their rights from the Crown, at a remote period. The barony of Lochmaben came afterwards into the possession of the ancestors of the Earl of Mansfield; and in an action at the instance of the proprietor of the barony, the Lords found, That the rentalers had such a right of property in the lands that they could not be removed, and that they might dispo-
ne their rights to extraneous persons. See APPENDIX.

Fol. Dic. v. 4. p. 321.

1752. *February 29.* KERR of Moriestoun *against* JAMES WAUGH.

In the year 1592, Lord Borthwick granted a rental right of a husband-land in Ligertwood, in favours of James Waugh and his spouse, and the heirs of the

No. 39.
A perpetual
rental is not