

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