

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

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marriage, which failing, to the husband's heirs whatsoever; and his Lordship binds himself and his heirs, to warrant them and their foresaids; for ever, as kindly tenants of the said husband-land, they paying of rent, six bolls bear, two bolls family-meal, &c. with 40 merks at the entry of every heir.

In a removing of the heir of the said James Waugh by Kerr of Moriestoun, purchaser of the lands of Ligertwood, which was brought before the Court of Session by advocacy, the Lords found, That a perpetual rental is not good against a purchaser, more than a perpetual tack.

Fol. Dic. v. 4. p. 321. Sel. Dec. No. 8. p. 11.

1781. July 4. MACKENZIE *against* GULLEN and Others.

No. 40.

Mr. Mackenzie, purchaser of the Winton estate from the York-buildings Company, at a judicial sale, brought an action of removing against the inhabitants of the village of Seton, many of whom, with their predecessors, had held their possessions for ages, for a trifling duty. The defenders allowed they had no feudal titles, but pleaded, That holding their possessions beyond all record, they were to be considered as actual proprietors; consequently, their subjects did not fall under the Earl of Winton's forfeiture, and therefore never belonged to the York-buildings Company, nor formed any part of the lands purchased by the pursuer. Answered, The defenders were no more than ordinary rentallers, and removeable at the pleasure of the proprietor. The Lords decerned in the removing.

Fol. Dic. v. 4. p. 322. Fac. Coll.

* * * This case is No. 118. p. 10310 *voce* PERSONAL AND REAL.

1795. February 4. IRVING and JOPP *against* COLLINS.

No. 41.

The Lords found, That the rentallers of Lochmaben may transmit their rights to others by infestment.

Fol. Dic. v. 4. p. 321. Fac. Coll.

* * * This case is No. 119. p. 10316. *voce* PERSONAL AND REAL.