

This was decided of before, betwixt my Lord Douglas and Mr Patrick Walkinshaw, Minister.

No 20.

Kerse, MS. fol. 119.

1622. March 19.

EARL OF ROXBURGH *against* GRAY.

No 21.

IN an action betwixt the Earl of Roxburgh and Robert Gray, it was found, that the setting of tacks by a rentaller, whose rental contained a clause irritant, if he made any alienation or disposition of the rental, was a cause to annul the same; but that the setting a tack to the rentaller's eldest son, was not a cause to infringe the same.

Fol. Dic. v. 1. p. 484. Haddington, MS. No. 2618.

* * * Kerse reports this case.

THE LORDS found a rental, bearing this clause, that it should not be lawful to annulzie the same, null, because the rentaller had set tacks of the rented lands, for certain years, which were expired; and so found, that the words of "not alienation" did include locations.

Item, In the same cause, the LORDS found, that the assignation of the rental by the father to the eldest son, could not be a cause of forfeiture of the tack.

Kerse, MS. fol. 119.

* * * This case is also reported by Nicolson.

REDUCTION of a rental, set by Francis, Earl of Bothwell, to Robert Gray, of the mill of Midleen, and certain lands within the Abbey of Kelso.—*Ratio,* It is provided in the rental, that, if Gray make alienation or disposition, in hail or in part, to whatsoever person or persons, without consent of the immediate superior, first had and obtained, then the rental to be null. And true it is, Gray has set the tack libelled to the persons libelled; at the least, has disposed the hail land and mill to Robert Gray, his son, and possessed him therein, without the Earl's consent, now superior. *Alleged,* The clause irritant, and general prohibition of alienation, cannot be extended to the disposition made by Gray to his eldest son, being the person whom, by the law of God and man, he is obliged to entertain, bring up, and provide, and who is to be heir, no more than an alienation of ward lands to the eldest son could infer recognition; and true it is, that Robert, to whom the defender has disposed, is his eldest lawful son. Finds the allegiance relevant to elide the disposition;

No 21. and assign to prove, and siclike assign a day to the pursuer to prove the summons anent the setting of the tack.

Clerk, Hay.

Nicolson, MS. No. 9. p. 5.

No 22.

1622. November 14. MR THOMAS NICOLSON *against* JOHN BONAR.

A RENTAL found null, *ope exceptionis*; because it was disposed in subtack, without consent of the heritor. But the LORDS found, that the rental should not fall *in toto*, but in so far as it was disposed.

Fol. Dic. v. 1. p. 484. Kerse, MS. fol. 119.

* * * Haddington reports this case.

1622. November 14.—IN an action betwixt Mr Thomas Nicolson and one Nisbet, one of his tenants of Cockburnspath, and John Bonar, Nisbet's rental was found null, because he had annalzed his rental to Bonar; and, therefore, the rental was decerned to be null, both to the annalzier and receiver of the disposition; but, because he had not disposed the hail rental, it was found to subsist to Nisbet for that part which he had not annalzed; and Mr Thomas Nicolson was not astricted to prove, that it was the custom of the barony, because it was thought to be the nature of rentals through the whole kingdom.

The like was found of before, betwixt the Earl of Angus and Mr Patrick Walker, Minister.

Haddington, MS. No. 2666.

* * * This case is also reported by Durie.

IN an action pursued by Bonar, against Mr Thomas Nicolson, for reduction of a decret of removing, obtained by the said Mr Thomas, which reduction was founded upon a rental set during the rentaller's lifetime, who was yet living, by the said Mr Thomas Nicolson's authors; the LORDS found the rental null, by way of exception, and that it could not be a ground to defend against the removing; and assoilzed from the reason, because that rentaller set the lands contained in the rental, in subtack to another person, and so had lost the benefit of his rental, by denuding himself of the rental, which was found not to be transmissible, and that the lands could not be set by the rentaller to any other, albeit the subtacksman offered to put the rentaller again in his own place, which was not sustained.

Nicolson per se.

Alt. *M'Gill & Pimrose.*

Clerk, *Gibson.*

Durie, p. 35.