

1630. July 2.

L. ROWALLAN *against* BOYD.

In a removing, an exception upon a rental, wherein both setter and receiver were dead, bearing a clause, "That the pursuer should receive the rentaller's bairns after him, kindly tenants, upon such conditions as they should agree upon;" this was found sufficient to defend the eldest son of the rentaller, he paying such a quantity of grassum, and such yearly duty, as others of the pursuer's kindly tenants do for the like lands, and which should last to him for as many years as are granted in the rights made to others of the like lands, and upon the like conditions, and admitted to the rentaller's probation, to prove what others paid for the like lands.

Alt. *Boyd.*Clerk, *Gibson.**Fol. Dic. v. 2 p. 420. Durie, p. 523.*

Auchinleck reports this case :

A rental being granted by the umquhile Laird of Rowallan to Boyd of \_\_\_\_\_ of the lands of Craighouse, wherein was contained a clause, that the said Rowallan obliged him and his heirs to rental the heirs of the said Boyd as kindly tenants to him in the said room, as he and they would agree; after the decease of the said Boyd, Rowallan, heir to him who set the foresaid rental, pursues the relict and her son for removing. They allege, that by the said condition contained in the foresaid rental, the defunct's heir ought to have his life-rent of the said room, for payment of such entries and duty *pro rata* as the rest of the Barony had paid to their master; which the Lords found relevant, and referred to Rowallan to prove what entries and duties he had got from others of the Barony for the like room.

*Auchinleck MS. p. 203.*

1631. July 26.

STEWART *against* VISCOUNT of AVR.

A tack set from five years to five years *et sic in infinitum*, is null at the instance of a singular successor, but cannot be quarrelled by the setter or his heirs.

*Auchinleck MS. p. 234.*

1632. March 13.

AHANNAY of Kirkdale *against* AITON.

In an action for payment of duties of lands, the defender defending himself with a rental set by the Town of Wigton, to his father and his heirs heritably, *ad perpetuam remanentiam*, (for this was the tenor of the rental) and that he was heir to

No. 50.

Found in conformity to  
Corsehill  
against  
Wilson, No.  
43. p. 15188.

No. 51.

No. 52.

Found that a  
rental given  
to a man and  
his heirs,

No. 52.  
ought to last  
for the life of  
the first heir,  
and no longer.

his father, and so it ought to defend him during his life-time; and the pursuer contending, that the rental ought not to defend him after the decease of the first receiver, albeit it bore that word of the rentaller's heir; except that he might prove by authentic probation, that the custom of the Town of Wigton is so, that rentals so set are effectual to the receiver's heirs for his life-time; and that that custom has been allowed to the heir so to bruik;—the Lords sustained the exception, and found, that the rental set to a rentaller and his heirs, ought to maintain the first heir of the rentaller during his life-time; and that there was no necessity to allege or prove any such custom as was replied on; but sustained the exception without that allegiance; and found that they would observe this decision thereafter, when the like question occurs; but albeit it was so here found, yet the exception of the tenor of rentals may furnish cause of scruple; for if any heritor should receive a person and his heirs, rentallers to the setter personally, not reporting, that they are admitted to the setter and his heirs, it may appear *eo casu*, that then the heirs of the rentallers should not bruik longer than that setter's life; for albeit the rentallers heirs be mentioned, yet that may be constructed, that they should bruik, in case the rentaller's self should die before the setter, so that these considerations, and the like, will depend much upon the tenor and conception of clauses in rentals.

Act. Gilmor.

Alt. Hepburn.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 419. Durie, p. 629.*

\* \* Spottiswood reports this case :

It being questionable how long a rental given to a man and his heirs should last, the Lords having decided it sometimes this way, sometimes that; in an action between Mr. Christie and A. Hannay, they found that it should last for the life-time of the first heir of him to whom the rental was given, and no longer, conform to the civil law above-written, which they declared they would keep and follow in all time thereafter, when the like question should occur.

*Spottiswood, p. 354.*

\* \* See 15th March, 1631, Earl of Galloway, No. 25. p. 7194. *voce* IRRITANCY.

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1633. February 6. GORDON against M'CULLOCH.

No. 53.

In a removing from the lands of Ardblair against Henry M'Culloch, at the instance of John Gordon of Ardwell, who had comprised the same from umquhile M'Culloch of Myrton, heritor thereof; the Lords found this right, and defence thereupon underwritten, relevant, to defend the tenant, viz. that the defender had a tack from the umquhile heritor before the comprising, which albeit it was expired before the warning, yet the same bearing this clause, "That the said setter received the defender and his heirs kindly tenants to him and his heirs in the said