

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 annalzied 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 annalzied; 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 assoilzied 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.