

Old Decisions. The Viscount ^{of Stair} Lib. 2. tit. 9. s. 19 & 20 holds it to be chalking to the natural Design of Rentals, not to presume them to be Titles for the Receiver's Life. Which Opinion is confirmed by Statute (Act 60. Par. 11. s. 6.) and Sir George M'houze in another Place (Observ. on d. Act 60) seems to fall into it when he says, that Rentals not mentioning Heirs resolve in naked Liferents. And our present Custom seems to draw out a Rental for an indefinite Time to the Lifetime of the Rentaller without letting it go to his Heirs. Albeit regularly *qui sibi providet et haeredibus providisse videtur*. A Rental conceded in Favour of a Man and his Heirs, extends only to the first Heir 15 March 1635 L. Gallaway contra Burgeses of Wigtoun 19 March 1662. Achany of Kirdale contra Kirtoun Gray Feud. Lib. 5. Tit. 9. s. 7. Spotswood Dratt. Tit. Ususfructus. M'henzie Feud. For if it were extended to all Heirs, it would be equivalent to an heritable Right and want an *feh*. This is conform to the Brocard of the Civilians *in contraditum ad haeredes non transitoris intelligitur nomine haeredis haeres primus*. A Rental being set to a Man and his Heirs, the first Heir hath the Benefits, tho both the Seller and Rentaller be dead 17 Decem 1713 L. Kithdale contra L. Bishoptoun and his Lady. For the Decis on (5 July 1625 L. Aytoun contra Tenants) making such a Rental to be only during the joint Lives of the Seller and Receiver, is now overruled by contrary Custom. Nor would the Lord Duries observe (upon the Drattick betwixt Achany and Aytoun) 13 March 1632) viz that one and his Heirs being received Rentaller, is on Heretor, and not expressly to him and his Heirs, the Rentaller's Heirs should not Breich longer than the Heretor's

Life; be followed by the Lords: as if the Rentaller's Heir in such a Case were understood to be mentioned only with a View to the Event of his dying before the Seller. A Rental set to a Man and his Wife during their Lifetimes (without mentioning the longest Liver of them two) was sustained to constitute them both Rentallers, and to defend the Relief in Possession after the Husband's Death, as it would have been sustained in Favour of the Husband, had he survived the Wife 5 March 1629 L. Ley younger contra Kirkwood Stair Lib. 2. Tit. 9. s. 20.

The Heretor of the Ground only can set Rentals, but Tutors may renew them for the accustomed *gratum* Stair Feud. s. 17.

A Rentaller cannot without expresse Power given him introduce Tenants or assign the Rental, because Rentals being granted more out of Kindness and Friendship than ordinary Tacks, the Rentaller must labour the Ground as colonus. And if he do otherwise sublet the Land or assign the Rental he loses his Rental, if the whole or most Part of the Land therein be assigned; and by a partial Assignment of less than the Half

the Rental falls as to the Part assigned, but subsists for the rest of the Land 21 March 1623 L. Craigie Wallace contra his Tenants 26 Feb 1630 Lockhart of Carstairs contra Tenants of Bothwell 21 Feb 1632 L. Johnston contra Johnston Stair Feud. s. 16 & 25. Tho' an Assignment of a Tack not conceived in Favour of Assignys be null, without Prejudice to the Tacksmans Right. Yea, a Rental was found extinct by an excambion of the same for another Rental of the like Quantity of Land taking Effect by Possession, albeit the Contract of Excambion was conditionall if the Heretor consented, and to be null if disallowed by him: Which Provision was held to be elusory and not regarded more than such a Provision in a Charter and Respon grant. Ed by a Ward Vassal would save from Recognition 15 March 1631 L. Gal way contra Burgeses of Wigtoun. Disposition of a Rental whereupon the Acquires attaine Possession, was found to annull the Rental, albeit it was set to the Rentaller his Heirs Executors and Assignys, and to exclude a Subtack granted by the Rentaller to the said Party before the Disposition was quarrelled 21 Feb 1632 L. Johnston contra Johnston. Nor was a Clause in a Rental empowering the Rentaller to sublet in part and put Tenants, found sufficient to authorize him to assign the Rental 21 March 1623 L. Craigie Wallace contra his Tenants. Again, a Rental was annulled by the Rentaller, granting a Subtack, albeit the Subtenant offered to repon the Rentaller in his own Place 13 Novemb. 1622 Bon nar contra Nicolson. But a Rentaller cannot be deceiv'd to remove for having made over his Right without the Masters Consent till the priority of the Rental be null. Spotswood Dratt. Tit. Heretor receive a Rental Duty from an Assigny to a Rental as Assigny, he cannot quarrel the Rental as null for being assigned Hope Maj. Dratt. Tit. Rentals L. Craigie contra his Tenants Stair Feud. s. 21. A Rentaller may sublet to his eldest Son who is to succeed him Feud. Dratt. 19 March 1622 L. Roxburgh contra Gray Stair Feud. Nor was a Disposition by a Rentaller to his own Bairns found to make his Rental fall, seeing he retained the Possession with his Bairns 28 July 1630 L. ~~Maxwell~~ contra Tenants. A Rental is not annulled by the Rentaller's putting another in Possession, without granting him a Right in Writ 5 July 1625 L. Aytoun contra L. Wedderburn 31 January 1633 L. Cleghorn contra Crawford. But ones Possession by Toleration from a Rentaller (whose Rental contained an Obligation to put no other Person in Possession) annulls it even by Exception against the precarious Possessor, without calling the Rentaller 15 July 1620 Lady Maxwell contra her Tenants Stair Feud. One rentalled kindly Tenant to another and his Heirs in some Land, and in the keeping of a House, was found intitled to exclude the Master from removing him: Albeit the Rentaller had failed in his Duty, and in the Cause of granting the Rental, by suffering the House and Yards to decay 29 January 1620 D. Lennox contra Houston.