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. No 115.

In a removing of the heir of the said James Waugh by Ker of Moristoun, purchaser of the lands of Ligertwood, which was brought before the Court of Session by advocation; the LORDS found that a perpetual rental is not good against a purchaser, more than a perpetual tack.

Sel. Dec. No 8. *p.* 11.

1780. *February* 29. GORDON *against* MILNE.

No 116.

ISABEL GORDON possessing the estate of Edintore, as heiress apparent to her brother, disponed the lands to Dr Gordon, reserving her own liferent. Dr Gordon used inhibition to prevent her doing any deed to affect the lands to his prejudice. Posterior to this diligence, she let a nineteen years lease, and died before its expiration. In a reduction of this lease, urged for the tacksman, That when it was granted, the disposition in the pursuer's favour was merely a latent deed, he not having been infeft till long after. Mrs Gordon, on the contrary, being an apparent heir three years in possession, the defender's possession, acquired from her *bona fide*, must be valid: The inhibition, though it might affect all rights that touched the property of the lands, could not affect those that touched merely the possession. THE LORDS, without seeming to lay any weight on the effect of the inhibition, were of opinion, that the defender, who had derived his right from a person not infeft, was not entitled to compete with a singular successor who was infeft; and they decerned in the reduction.

Fol. Dic. v. 4. *p.* 70.

*** This case is No 65. p. 7008. *voce* INHIBITION.

1794. *December* 10. JAMES WADDEL *against* JOHN BROWN.

No 117.
The lease of an urban tenement was found equally effectual against singular successors, as a lease of lands.

DAVID MACQUATER, in 1791, by a missive, granted to John Brown, a lease of a dwelling-house and workshop in Glasgow for 17 years. Brown immediately entered into possession.

In 1792, Macquater sold these subjects to James Waddell, who, in 1793, brought an action of removing against Brown, in which he stated, that he had not been informed of the existence of the lease at the time of the purchase, and in point of law.

Pleaded: A lease is at common law a mere personal right; Bankton, b. 2. tit 9. § 1. The statute 1449. c. 17. has indeed made leases of "lands" effectual against singular successor, but neither the letter nor the spirit of that sta-

No 117. tute apply to leases of urban tenements. It is declared to have been made for the "saftie and favour of the puir people that labours the ground." Indeed, at its date, there were no leases of houses within burgh, and therefore it could not be intended to remedy an inconvenience which did not exist.

Besides, a farm or other rural subject, when let in lease, yields an annual profit; from it the lessee in general derives the maintenance of himself and family, and upon the faith of the lease, he lays out his stock in making improvements. Such lease is therefore much more an object of favour than that of an urban tenement, from which the possessor derives no income, and on which he is not even entitled to make meliorations without the consent of the proprietor; Erskine, b. 2. tit. 6. § 27.; 5th February 1680, Rae against Finlayson, *voce* TACK.

Answered: The act 1449, was meant to protect lessees of all heritable subjects, Stair, b. 2. tit. 9. § 2.; accordingly, although poor labourers of the ground only are mentioned, it was early extended to lessees of mills and fishings; besides, the word "lands," in our law language, comprehends burgage as well as rural tenements; 27th January 1768, Maclauchlan against Maclauchlan, *voce* TAILZIE.

The exclusion of urban tenements, too, from the benefit of the statute, in the present state of society, would be highly inexpedient and unjust, when leases, not of dwelling-houses only, but of valuable buildings within burgh for the purpose of manufactures, are frequently granted, and on the faith of the latter large capitals expended; particularly, as the universal understanding of the country has long been, that they are good against singular successors.

The decision, 5th February 1680, Rae against Ferguson, is erroneously stated in Lord Kames's Dictionary, the point now in question not having occurred in that case; and as Mr Erskine refers to this decision, as abridged in the Dictionary, as the sole ground of his opinion, it is entitled to no consideration.

The Lord Ordinary found, "That the missive of set by David Macquater the former proprietor, in favour of John Brown the tenant, being clothed with possession, is effectual against James Brown the purchaser."

On advising a reclaiming petition and answers, the Court considered the case as perfectly clear, and unanimously "adhered."

Lord Ordinary, *Polkemmet.* Act. *Jo. Clerk.* Alt. *Connel.* Clerk, *Menzies.*

R. D. *Fac. Col. No* 142. *p.* 326.

1781. *July* 4. ALEXANDER M'KENZIE *against* GULLEN, and Others.

No 118.
Rentallers whose rights are derived

AT the judicial sale of the Winton estate, belonging to the York-Building Company, two lots were purchased by Mr M'Kenzie; who, having expeded as