

was set *a non habente potestatem*, viz. by Bishop Thomas, whose predecessor, Andrew, had set one of the same fishings before to the boroughs. *Alleged*, this was not a competent reason to the pursuer to reduce upon, because *sive sic, sive sica*, he was to have no benefit by it as long as any of the two tacks stood, and it was only competent to the boroughs to reduce upon this reason. THE LORDS repelled the allegiance, and sustained the interest upon this same reason.

No 22.

Fbl. Dic. v. 1. p. 528. Spottiswood, p. 328.

* * * See Durie's report of this case, No 17. p. 5630, *voce* HOMOLOGATION.

1636. July 9. TENANTS of Hyndwood *against* The MINISTER of Coldingham.

THE Tenants of Hyndwood suspending in a double poiding against the minister of Coldingham, claiming their viccarage-teinds as a part of his stipend on the one part, and against the Lady Ayton, and Laird of Blackadder, her spouse, on the other part, the Lady claiming the same as a tackswoman by virtue of a tack of the same viccarage teinds, set to her by Mr William Douglas of Stanypath, minister at the said kirk for the time; who then had right to the said viccarage-teinds, set to her during all the days of his lifetime, who yet lives; and the present minister replying, that Mr William Douglas was never provided by any presentation to the viccarage, as a distinct benefice, but was only a stipendary minister, and had the viccarage-teinds assigned to him, as a part of his stipend, so that he could set no tack of these viccarage-teinds, which could endure longer space than during the time of his service at the said kirk, in prejudice of the succeeding minister, who was to be provided to the charge, no more than he could set any tack of the rest of his stipend, which could have no longer endurance; for otherwise, the entrant ministers might be sensibly wracked, and their stipends reduced to such a small proportion, whereupon they could not live; the LORDS found, that this tack could not defend the Lady, the setter being removed, and serving the cure at another kirk, albeit he be yet in life; seeing the viccarage-teinds are assigned to the minister, serving the cure at the kirk libelled, as a part of the stipend, wherein he cannot be prejudged by the minister his predecessor; these teinds not being bruiked by any person provided to the viccarage, as a distinct benefice by any distinct or several presentation, but being annexed to the minister, and allotted for a part of his stipend; so that he being a stipendary minister, he could not set any tack which could last longer than he remained actual minister at that kirk, of any part of these teinds, nor any other part of his stipend, thereby to prejudge his successor, or

No 23.

In a competition for viccarage teinds, the incumbent found preferable to a person having a tack from a former minister, who had been only a stipendary.

No 23. the kirk; and therefore they found the tack null, and that the present minister had best right to the teinds, and decerned him to be answered thereof.

Act. *Mowat.* Alt. *Craig.* Clerk, *Gibson.*

Fol. Dic. v. 1. p. 528. Durie, p. 812.

1637. March 25. The COLLEGE of Aberdeen against ———.

No 24.

The annexing of teinds to the property of a college, which had belonged to a dean and chapter, found not to alter the nature of the property, but that the consent of the chapter was still requisite to authorise a tack.

THE teinds of the kirk of St Machare, which is the only patrimony belonging to the Dean of the chapter of Aberdeen, was annexed by Parliament to the College of Old Aberdeen, for the better maintenance of the Principal, Regents, and other founded persons within the said College; and by the same act, the Principal is ordained to supply the Dean's place in the chapter. The College, as having right to the fruits and teinds of the said parish of Machare, sets a tack to the Lord Fraser (then Laird of Muchall) of the teinds of his lands within the said parish in *anno* 1579, for many liferents, and many nineteen years thereafter.

This tack was craved to be reduced by the College and their procurator, upon this ground, that their teinds being a part of the deanry, could not have been set without consent of the Bishop and chapter, but so it was, that this tack was only set by the Principal and Regents of the College, and has not consent either of Bishop or chapter. *Alleged*, No necessity of the consent of Bishop or chapter, because this kirk was dismembered from the deanry, and no more a part thereof, but annexed to the College and the members thereof, who might very well dispose of it as of any other part of their patrimony, whereunto they needed no consent but their own. THE LORDS found the reason of reduction relevant, for they thought the annexing of these teinds to the College did not alter the nature of them, but that they remained still in the Dean's patrimony, (the Principal of the said College being ordained to be Dean of the chapter in time coming) and consequently, as pertaining to a member of the chapter, could not be disposed without consent of the Bishop and chapter.

The same had been found twice before in favours of the same College against other parties.

Fol. Dic. v. 1. p. 527. Spottiswood, p. 136.

No 25.

Long possession alone found to entitle the minister to the stipend.

1661. July 4. MR ROBERT HERRIES against LOCKERBY.

MR ROBERT HERRIES minister at Drysdale, having *anno* 1641, set to Lockerby a tack of the teinds, charges him for the tack-duty, who suspends upon this reason, that the town of Glasgow having gotten from the King a right to