

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

the spirituality of Glasgow, they obtained a decret of reduction of this tack, the minister being called, and the reason of reduction was, in respect Drysdale was not a parsonage, but a mensal kirk of Glasgow, and the minister had never more from the bishop, but an assignation to so much of the teind as he was pleased to give him. It was *answered*, That the reduction was not obtained till the 1656, and the minister being in possession 15 or 16 years before, though the tack be reduced, yet his possession, without respect to the tack being so long, it ought to give him as minister, a good right to the stipend he enjoys, being no more, but rather less, than the law allows to ministers. Likeas, Lockerby got a new tack from the town of Glasgow, which reserves what is allocated to the minister, and there being no other allocation than has been allowed to him by his possession, he ought to continue therein; especially, seeing the teinds are able to pay both the tack-duty payable to the town of Glasgow, and the quantity also contained in the charge. Likeas, he passeth from the charge, in so far as it is founded upon the tack, and insists only as minister serving the cure.

THE LORDS sustained the charge for the quantity, whereof the minister has been so long in possession, the minister's stipend being no greater than what is allowed by law.

*Gilmour, No 2. p. 2.*

---

1665. June 27. ALEXANDER FERGUSON *against* STUART of Askeoge.

ALEXANDER FERGUSON having obtained a presentation from the King, as one of the prebendaries of the chapel-royal, and thereupon a decret conform, and having charged Stuart of Askeoge, he gives in his special charge, that the parish of Inchgarth, which is now annexed to Rothesay, belonged to his prebendary, as being a part of the patrimony of the chapel royal. It was *answered* for Askeoge, That he bruiks the teinds by virtue of a tack granted by Mr Ninian Stuart minister of Rothesay, whereof this kirk now annexed is a part, and that there is nothing appears to instruct that these teinds were ever mortified to the chapel-royal, or that the chapel-royal was in possession thereof. The pursuer *answered*, That seeing he had the King's gift and decret conform, it was sufficient, unless the defender would allege, that the said Mr Ninian Stuart had a better right, or was in possession; for the King being the common author and fountain of rights, his Majesty's gift is sufficient against any that show not a better right; and as for the tack produced, it is null, being for 19 years, without consent of the patron. The defender *answered*, That albeit both parties were in *acquirenda possessione*, yet *decimæ debentur parochæ, ejusq. præsumuntur nisi aliter appareat*; and therefore unless these teinds have been transmitted from the parson of the parish, by long possession or mortification, they are his, and the King's gift alone cannot take them from him; but here the parson has

No 26.  
Teinds were found due parochæ, notwithstanding the King's gift.