

1669. June 24. KENNEDY and MUIR *against* JAFFRAY.

MR JOHN JAFFRAY being presented to the parsonage and vicarage teinds of Mayboll, and having obtained decret conform, there is a double pointing raised by the heritors and possessors of Fishertoun. Mr John Jaffray craves preference as parson, and so having right to the whole benefice; the other party called is Grange Kennedy, and Muir of Monkwood, who craved preference on this ground, that the teinds of Mayboll was of old a part of the patrimony of the nunnery of North Berwick, and the prioress for the time, with the consent of one Nun, who was then only alive, set a tack thereof to Thomas Kennedy of Bargenny, and Gilbert Kennedy his son, and to Gilbert's first heir, and after all deaths for three nineteen years. The prioress having thereafter, at the King's desire, resigned the teinds of Mayboll to be a parsonage, did in her resignation, except the tack set to Bargenny, which was always clad with possession, and was assigned to David Kennedy of Ballinmore, and transferred to Mr John Hutchison, and by him to Kennedy and Muir, as to the teinds of Fishertoun, whereupon they crave preference. It was *answered*, for Jaffray, that by their right produced, there is related another tack granted by Mr James Bonnar, parson of Mayboll for the time, to the Lord Ochiltree, which came by progress in the person of Ballinmore, having then in his person Bargenny's tack, so that Ballinmore's taking that right acknowledges the parson's right, and passes from his former tack, unless in his right he had expressly reserved his former tack; so that neither Ballinmore nor these assignees can now make use of Bargenny's tack, it being a certain ground, that the taking of a posterior tack, having a greater tack duty, or a shorter term, evacuates a prior tack in that same person. It was *answered*, that the allegiance is nowise relevant, Ballinmore not having immediately taken a second tack, but only finding another tack by progress in the person of the Lord Binnie, to remove that impediment, and shun his trouble, he purchased right thereto, but never bruiked thereby.

THE LORDS found that the taking right to another tack, did not infer a passing from the former tack, unless it were proven, that the posterior tack had a greater duty, or shorter durance, and that Ballinmore had paid the said greater duty to Bonar, or bruiked expressly by the later tack.

*Fol. Dic. v. I. p. 433. Stair, v. I. p. 625.*

1678. January 23. DUKE OF LAUDERDALE *against* The EARL of TWEDDALE.

THE Duke of Lauderdale, as having right by infestment of erection to the abbacie of Dumfermline on the south side of Forth, pursues the Earl of Tweddale and the tenants of Pinkie, for the teinds of Pinkie. The defender *alleged* absolutor, because he bruiks by tacks of these teinds, yet unexpired; and produces a tack set by Abbot Pitcairn to M'Gill of Rankeilor, whereby 'the

No 30.

Taking a right to a second tack from a third party, infers not a passing from the former, unless the posterior tack had a greater duty or shorter durance, and that the tacksman had paid the greater duty, or bruiked expressly by the latter tack.

No 31.

A tack of teinds was found past from, by accepting another tack, of