

and prorogation to be for both stock and teind; the defender proving his use of payment, and the Earl of Winton's receiving of that duty.

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1684. *January 26.* The MINISTER of ——— *against* GLENURCHIE, NOW EARL OF BREADALBANE.

THE Minister of ——— raises a reduction, against Glenurchie, now Earl of Breadalbane, of a tack of his teinds which he had set him at the time he did present him to be minister of that kirk; as a simoniacal paction, to the prejudice and dishonour of the church. ANSWERED,—Whatever may be reputed simony by the Canon Law; yet, with us, by the first Act of Parliament 1612, such tacks set by ministers are declared not to be simony, providing he leave to himself and succeeding ministers a sufficient maintenance.

Which, I think, from other Acts, may be interpreted to be eight chalders of victual or 800 merks of money; and that, whether it be *pactum honestum* or *turpe, non refert*, (neither should the setter who is *in pari turpitudine* quarrel it;) seeing all the patrons of Scotland use it at their presenting, and the foresaid act allows it.

This was not decided, but the bishops were very zealous, and threatened they would have these tacks annulled as simony.

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1684. *February 5.* LESSILS and SPOTSWOOD *against* CARMICHAEL and BORTHWICK.

LESSILS and Spotswood against Carmichael and Borthwick being reported by Edmonston; the Lords turned the decret of the Bailies of Haddington into a libel, because it held a married woman as confessed upon her oath, as contumacious; seeing it was *partes judicis* to know that she was not obliged to depone; but allowed them yet to prove her possession, with this declaration, That, if it shall be made out against her, they will modify large expenses for her reclaiming against this decret, now turned into a libel.

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1684. *February 5.* HOME of COLDINGAMELAW *against* KER of MORISTON.

THE Lords found it proven, by the tack and other documents produced, that Moriston's apprising of the said law was in trust, except as to the sum due to himself; and therefore ordained Moriston to count and reckon.

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