

act of Parliament 1585, discharging any conversion of victual into money, they find the church lesed by the smallness of the price in the conversion, and therefore reduce tack.'—This is a leading case, and opens the door to the reduction of many such tacks. The Bishops are now talking, that, when the Parliament shall sit, they would have an act of Parliament binding them up, that they may not have power to set tacks of their teinds for nineteen years, to wrong the next successor, but only during their lifetime, as other inferior clergymen do; that these casualties may not be forfeited and given away from the next incumbent, who may not out-live the expiration of that tack set by his predecessor. But, at this rate, few would take tacks from them, at least would give little or nothing for grassums and entries of so uncertain a tack. However, ere long the tacks of many teinds will fall through Scotland, though set for many nineteen years before the restraining act in 1617; and then they will either fall in the hands of the kirkmen, or of the titulars and Lords of erection. These long tacks of teinds were invented, because teinds after the Lateran Council might not be perpetually given away in feu, as being *juris sacri et divini*; and it is wondered how the laymen consented to the abridging the clergy's unlimited power in setting such tacks.

No 31.

*Fountainhall, v. 1. p. 227.*

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1685. *March.* MR WILLIAM BARCLAY *against* The COLLEGE OF ST ANDREWS.

No 32.

IN an action at the instance of a minister against the College of St Andrews, for payment of L. 40 of augmentation to the pursuer, as *decennalis et triennalis* possessor thereof by a presumed right;

*Alleged* for the defender; The foresaid rule of chancery presumes only a minister's title to be good where it is not produced; but where it is produced, as here, it may be convelled by nullities, and *præsumptio cedit*. And the pursuer's title to the L. 40 is null; for that though it flows from the college, it is not subscribed by a *quorum* of the masters appointed by the foundation.

THE LORDS sustained the allegiance for the college, and assoilzied.

*Harcarse, (MINISTERS.) No 694. p. 196.*

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1686. *December.* MINISTER OF LOGIE *against* The HERITORS.

No 33.

THE designation of a minister's glebe being quarrelled as half an acre more than the four allowed by law;

*Alleged* for the minister; That he and his predecessors had been thirteen years in possession.

*Answered*; *Decennalis et triennalis possessio non relevat in petitorio*; *2do*, This presumptive title *cedit veritati*; for the true title being the designation of

No 33.

a glebe, which, according to law, should consist of four acres; if upon measuring half an acre more appear to have been designed, the designation is null.

THE LORDS, before answer, ordained the land to be measured.

*Harcarse, (MINISTERS.) No 696. p. 196.*

1751. February 13. & 15.

ROBERT MACKINTOSH *against* The TOWNS of Perth and Linlithgow.

No 34.

It was found there was no charge of third minister in Perth, nor second in Linlithgow.

BY an act 17th George II. for raising and establishing a fund for a provision for the widows and children of the ministers of the church of Scotland, a method is laid down for raising the said fund by yearly contributions, to be paid by the ministers having right to benefices in the church, and by every benefice that should become vacant before the 24th of March 1744, being subject and liable to the sum of L. 5 Sterling for every half year that the vacancy should continue; and every benefice that should become vacant after the said 24th of March 1744, being liable to the sum of L. 2 : 10s. for every half year during the vacancy; which is ordained to be paid in to the presbytery, within whose bounds the benefice lies; and it is enacted, 'That such ministers of the church of Scotland, as were or should be ordained or admitted assistants and successors to the minister having right to the benefice, should, as to all the purposes of the act be held as admitted to a benefice in the church of Scotland, only from the time that any such assistant was or should be married, or when he should come to have right to the full benefice.'

Robert Mackintosh, as commissioned by the presbyteries of Perth and Linlithgow, brought an action against these burghs, for payment of the quota out of their vacant benefices of the second minister of Linlithgow, and third of Perth, in terms of the act.

*Answered,* There are no such benefices in the church, as those of the second and third ministers respectively, of these burghs; there is not any decret of the Commission for the plantation of kirks, establishing any such benefices; and those who have officiated, were only in the nature of assistants to the beneficiary, employed and voluntarily provided for by the burgh, with the assistance of others in the parish; and their stipends no charge on the teinds; the Magistrates could not dilapidate the town's common good, by subjecting it to any such constant burden; and as the other funds had failed, they had discontinued the calling of any minister in these places, there being no necessity for them.

*Pleaded* for the pursuer, The act appointed the quota to be levied out of every vacant benefice; and it is plain it considered every minister, settled in a stipend as in his own right, as having a benefice; and the said stipend as one, however made up; as it takes notice of assistants to another beneficiary, ordained as successors to him in the benefice; most of the erections of ministers,