

No 6.
incumbency
only, may be
let on what
terms he
pleases, so
that no other
except him-
self be preju-
diced.

set by the said Vicar to the said Laurence, and advocated to the Lords of Session from the said Commissaries, the said pursuers and defenders compearing, it was *alleged* by the said pursuer, That the said tack should be reduced, because it was set, against the law, for the said pursuer's lifetime, and also without consent of the Abbot of Holyroodhouse and convent thereof, to the said vicarage, and also in diminution of the rental. It was *alleged* by the said defender, That howbeit the said pursuer had set the said tack of the said vicarage to the defender, the said pursuer might never come against his own deed so long as he lived, albeit it might not hurt the next intrant; which allegiance of the said defender was admitted, and found, that a parson or vicar setting his benefice for all the days of his life, he may never come in the contrary thereof, *durante vita sua*.

Fol. Dic. v. 1. p. 529. Maitland, MS. p. 178.

* * * Balfour reports this case :

1566. *March 1.*—BE the law and consuetuede of this realme, it is expreslie forbiddin, that a Vicar set his benefice, or the proffetis and dewtie thair of, in tak and assedatioun, without consent of the ordinar and cheptour, at the leist of the ordinar and patron, and for the space of thre zeiris allendarhe; and gif ony sic assedatioun be set, the samin is of nane avail, and may be reducit, at the instance of the successour of him quha set the tak, bot not be himself; because the samin beand set be him in his awin time, he sall never be heard to cum in the contrare thair of, or to desire the samin to be reducit and annullit.

Balfour, (ASSEDATION.) No 23. p. 204.

No 7.
A gift of a
benefice
the entry to
which is ap-
pointed to be
at the death
of the present
incumbent,
found null.

1568. *June 11.* SLEWMAN *against* TOWN of EDINBURGH.

ANENT the action pursued by Mr Alexander Slewman chaplain, against the Town of Edinburgh, who troubled him in a benefice of alterage in St Giles's kirk, given to him by the King, and given under the Privy Seal, conform to the use at that time; it was *alleged* by the said pursuer, That the Town troubled him in the uptaking of the profits of the said benefice; and, if he had any, desired the same to be produced by him before the Lords, who produced a gift under the Privy Seal of the said benefice, given, as said is, to the said pursuer by the decease of the last possessor thereof, when it shall happen him to decease, or to demis the same. It was *alleged* by the Town, That the gift was null in itself, and given against all law, because the possessor was not dead at the time of the giving of the gift, nor yet two years after, or thereby, nor yet demitted the same before his decease; which allegiance of the Town.

was found relevant ; and found, that all gifts of benefices given in manner above written, are against all laws and not to be admitted.

No 7.

Fol. Dic. v. I. p. 528. Maitland, MS. p. 186.

1569. December 17.

PARISHIONERS OF L. against KER.

No 8.

IN an action of double charges moved at the instance of the parishioners of L. against James Ker, alleging him tacksman of the vicarage of L., and therefore charged to answer and obey to them ; and, on the other part, by Walter Ker, *alleging*, That he was provided by the King's Grace to the title of the said vicarage ; it was *alleged* by the said James, tacksman, That he being tacksman, and, by virtue of his tack, being divers years in possession, he should be answered *allenary*. It was *answered* by the titular of the benefice, that his predecessor, Mr Robert Ker, was continually in possession to the time of his decease, and not the said tacksman, and albeit his allegiance was contrary to the former, yet he ought to have the same probation, because he being in his predecessor's place, and alleging his possession with his title, the elder title with possession continual, should be admitted to probation. THE LORDS admitted the titular's allegiance, in respect of the eldest title to his probation, and repelled the tacksman's allegiance.

A tack of vicarage found to subsist for only three years, see No 13. P. 7939.

Also in the same action, it was *alleged* by the said James Ker tacksman, That he had assedation for divers years to run, because he had assedation of the said vicarage from three years to three years, during the space of nine years, whereof there were six years to run. It was *answered* by the said titular, That the said tack was expired, because there were three years forth run, and a vicar might not set a tack but for three years *allenary*. It was *replied*, That if the vicar might set no longer tacks but for three years after three years, at the least the said tack should last three years, because the setter was but lately deceased. It was *answered* by the titulars, That the tack of nine years, whereof there were three run, could not stand any years after the vicar's decease ; only the first three years thereof were set by the law, and the rest against the law, in respect that a vicar, by the law and consuetude received in this realme, may only set three years' tacks, and a parson only five years' tacks. THE LORDS found, by interlocutor, that the said tack should stand only but the first three years, which three years, because they were outrun, found the said assedation expired.

Fol. Dic. v. I. p. 529. Maitland, MS. p. 215.