

No 9.

Found that the mansion-house of an abbay with the inclosures thereof, and orchards, though without the walls, could not be feued.

1569. February 4.

The KING and the ABBOT of Balmerino *against* the LAIRD of Kynneir.

ALL infeftmentis of few-ferme, of all and haill ony abbay place, housis, biggingis, zairdis, orchardis, als weill within as without the walls of the said abbay, togidder with all the fermis, rentis, and dewties of the samin abbay, and advocatioun and donatioun of kirkis, maid and gevin to ony persoun heritable, and his airis, is of nane availl, force, nor effect, and sould be reducit; because the samin is not only gevin in manifest hurt of our Soverane Lord, and his patrimonie, quhome to the nominatioun and provisioun of all abbayis pertenis, as undoubted patrour thair of; bot also it is maid and gevin agains all gude ordour, statutis, and lawis, be the quhilk all universall dispositiounis, and specially of sic placis, advocatiounis, donatiounis of kirk landis, ar defendit, inhibit, forbidden, and declarit to be of nane avail, force nor effect.

Fol. Dic. v. 1. p. 527. Balfour, (FEWIS.) p. 171.

1579. November 17.

A. *against* B.

No 10.

It was found by the LORDS, that a tack set by the possessor of the benefice, for three years to three years, ay and while the space of 19 years be run forth, should be sufficient to him to whom the tack is set after the decease of the setter (he being in possession) to serve him for three years, and not to serve him for the 19 years tack to the next entrant to the benefice.

Fol. Dic. v. 1. p. 529. Colvil, MS. p. 274.

1583. March. PARISHIONERS of Cumnock *against* LAIRD of Caprington.

No 11.

Found in conformity with Vicar of Bowton *against* Cockburn, No 6. p. 7935.

IN the acsion of double poinding pursued betwixt the parishioners of Cumnock and the Laird of Caprington, as donatar to the escheat of the Laird of Cumnock, the Laird of Caprington *alleged*, that he ought to be answered and obeyed, because the Laird of Cumnock had tack and assedation of the teinds of the kirk of Cumnock, set by Hamilton, parson thereof, first a nineteen year's tack, and a seven year's tack, and a liferent tack. The nineteen year's tack being produced, compeared one of the parson's setters thereof, and *alleged*, that the same was null of the law, and that Caprington could have no action by virtue of the same, because it wanted the solemnities requisite of the law in a nineteen year's tack, which were the seal and consent of the bishop and chapter, without which there could not a nineteen year's tack subsist. It was *answered*, that the parson had set the same, and subscribed it, and by a contract bound and obliged himself to set it; and as to the rest of

the solemnities, which were the common seal, and the consent of the chapter, he left that to be purchased by Cumnock himself; and in the mean time, Cumnock became in possession by virtue of the same, and the parson had received his duties from him, *et sic nullo pacto contradicere potent proprio facto*. To this was *answered*, by reasoning among the LORDS, that whatsoever was done by the parson's consent, it might derogate to the law, *et jus publicum privata illius conventionione tolli non potuit, et ubi carta forma jure statuitur in actibus hominum illud privato alicujus pacto tolli non potest, de qua re vide Bald. L. 29. C. De pactis*, and so the party might be ay heard to propone a nullity of the law against the thing that is done by his own consent *et imperite*. *Allegebant advocati in L. 4. § 6. D. De re judicata, quod non dicitur aliquis condemnatus nisi justa sententia condemnatus fuerit, et L. 4. D. De exercitoria actione, ubi plures sunt proposita magistri sub conditione ne alter sine altero quid gerat, si aliter gestum fuerit non tenet*. THE LORDS, after long reasoning, found by interlocutor, that albeit the nineteen year's tack was not perfect, and wanted the solemnities requisite of the law, yet the setter thereof, in so far as he had bound himself to do the same, and had received the duties of the tack, could not be heard to say any thing against it *in judicio possessorio*.

Fol. Dic. v. I. p. 529. Colvil, MS. p. 390.

No 11.

1584. February. VICAR of Gaston against VALENTINE.

No 12.

The vicar of Gaston, called Cunningham, set a tack of his vicarage to one Valentine, for the space of three years, and from three years to three years, during all the time of his lifetime. It was *objected*, that the tack was expired by the decease of the vicar, and the tacksman could not thereafter be answered of the vicarage, nor bruik the same by virtue of the said tack. It was *answered*, that the tacksman was entered into the possession of the last three years, and had bruiked the vicarage the other six years preceding, and so notwithstanding the decease of the vicar, he ought to bruik it for the last three years, the which was found by the LORDS.

Fol. Dic. v. I. p. 528. Colvil, MS. p. 397.

1591.

MELVIL against ———.

MR WILLIAM MELVIL commendator of Tun gland, being provided to the abbacy of Kilwinning, after the slaughter of the commendator thereof, his right was questioned as null of itself, *per regalum 28 cancellariæ, de veri-similitudine: Num beneficium vacare debet antequam alio detur; et tantum temporis post vacationem effluere debet, quantum sufficiat illum ad notitiam summi pontificis pervenire*; but so it was, that his provision was dated 1st August, on which

No 13.