

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.