

office had ratified his tack, and set him a new tack, it was *answered*, That all that was done after the inhibition, and so he not having a valid title the time of the inhibition, he could have no action of spuilzie for that year.

No 15.

Fol. Dic. v. 1. p. 528. Haddington, MS. No 2347.

1614. *June.*HEWIT *against* EARL of CASSILIS.

IN a reduction of a tack of the _____ of _____ pursued by Mr Patrick Hewit *contra* the Earl of Casillis, upon this reason, that the tacks wanted the common seal of the convent, the matter being disputed, the LORDS were loath to decide, and so the whole was referred to the Bishop of Glasgow by both parties. In this case, there was alleged a practice betwixt the Laird of _____ and the parishioners of _____ dated in 1589, but there the tack wanted also the convent, because there was none.

No 16.

Kerse, MS. fol. 40.

1616. *July 12.*L. of DRUMLANRIG *against* The Lo. of CONHILL and Others.

IN an action betwixt the Bishop of St Andrews and the parishioners of Kilwinning, the LORDS minded to find, that the abbacie of Kilwinning might be dissolved *sede vacante* by his Majesty without consent of the Parliament, but thereafter it was recalled in an action of reduction pursued by the L. of Drumlanrig *contra* the Lo. of Conhill and Others, tacksmen of Carlaverock, for reduction of a tack set by the Provost of Lincluden, the LORDS found, that a provostrie was not a prelacy, and therefore found the tack null, because it was not set with consent of the patron conform to the act of Parliament made *in anno 1594.*

No 17.

Kerse, MS. fol. 40.

1622. *March 14.* MAXWELL *against* DRUMLANRIG.

IN an action of reduction pursued by Edward Maxwell of the Hills against the Laird of Drumlanrig, the LORDS found, that a tack of teinds set by a provost of a college kirk having a chapter of prebendaries, was not lawful if it had not the consent of the most part of the prebendaries; so as if there were six prebendaries, there behoved to be four consenters to the Provost and to his deed. It was also found, that albeit there were prebendaries who were minors or furth of the country, *animo remanendi*, that the want of their consent did not invalid the tack, unless the minors were of 14 years of age complete, otherwise their

No 18.

No 18.

consent was not necessary ; if the tack had the consent of the most part of the prebendaries, being within the country and always 14 years of age complete.

Fol. Dic. v. 1. p. 527. Haddington, MS. No 2613.

* * * Durie reports this case :

1622. *March 14.*—IN an action pursued by the L. Drumlanrig's son against Edward Maxwell of Hills, for reduction of a tack set to the said Edward by the Provost of Lincludin, of the parsonage teinds of Lothrinton, upon this reason, because the same was not set by the Provost with consent and subscription of the most part of the convent ; the Lords repelled that allegiance, whereby the defender's procurators would have maintained the tack, alleging the same to be sufficient, being subscribed by the Provost and the just equal half of the chapter, seeing they affirmed that the half of the chapter and Provost's self, was the most part of the college, and their tack being so subscribed, ought to be found lawful. Which allegiance the Lords repelled, because they found the Provost to be a setter in all such cases, and that the chapter were but consenters, whose consents to the Provost's deeds behoved to be testified by the subscription of the most part of the convent, and not of the just half only ; in the which computation, the Provost who was the direct setter, could not be reputed nor counted to make up one of the number of the chapter, added to the half of the chapter, thereby to make up the most part of the chapter, seeing the consent of the chapter behoved to be testified by the subscription of the most part, beside the principal setter.

In this same process also the Lords found, that it was neither requisite nor necessary to the validity of the said tack, to have the consent of such persons of the chapter who were minors, not past the age of 14 years at the time of setting of the tack, albeit they were then 13 years of age and nine months, nor yet of such persons of the chapter, who at the setting of the tack were out of the country, and divers years before the setting thereof, and divers years thereafter ; and therefore found, that albeit the minors and absents out of the country were of the chapter, and bruiked their own parts of the patrimony of that benefice properly belonging to them ; yet tacks and deeds done of that benefice, required not necessarily to the validity thereof the consent of such persons ; so that whatever tack or other right of that benefice wanting the consent of so many of the minors, or absents, as would make up the most part of the chapter, were not null of the law ; but declared, if the rights or tacks had the consent of the most part of them, who were remanent of the chapter, by and atour the minors and absents, who were reputed not as of the number of the chapter, to this effect, viz. for the necessity of their consents, that the same should not be quarrelled upon nullity, for want of consent of the most part of the

Chapter; likeas the LORDS declared, that if all the Chapter were minors, that there was no necessity of any of their consents.

No 18.

1623. *June 24.*—IN an action of reduction pursued at L. Drumlanrig's instance, against Maxwell of Hills, for reduction of a tack set to Maxwell of Hills, which was clad with long preceding possession, because it wanted the consent of the most part of the Convent of the College Kirk of Lincluden, to the provostry and benefice whereof the teinds contained in that tack belonged; the Convent, consisting of eight persons, by the Provost, and the tack being only subscribed by the Provost and three of the convent;—the LORDS found it proven sufficiently that the Chapter consisted of eight persons by the Provost, by production of the provisions given to eight several prebendaries of their prebendaries by the Provost, and by production of some feus and rights set by the Provost, which were consented to by the said eight prebendaries, which they found sufficient probation to verify, that the Chapter consisted of eight persons by the Provost, and therefore that the subscription of the most part was necessary with the Provost to that tack controverted; and found it not necessary to show by the foundation, that the Chapter consisted of eight persons; albeit the defender *alleged*, That there was no necessity to him to have the consent of the most part of eight, except the foundation clearly determined that chapter to consist of that number, for the subscriptions of the prebendaries to some person's particular rights, as consenters, and the provisions to the prebendaries was *alleged* by the defender to be no concluding argument to infer necessarily, that the Chapter was made up of that number, and that thereby he had a necessity to have the subscriptions of the most part of that number to his tack, which was clad with so long possession, and never impugned before, except it were so constant and certain by the foundation of the benefice; which allegiance was repelled by the LORDS.

Act. *Hope & Nicolson.* Alt. *Peebles, Stuart & Cunninghame.* Clerk, *Gibson.*

Durie, p. 21. & 65.

1624. *November 9.* HOPE against the MINISTER of Craighall.

IN an action betwixt Mr Thomas Hope and the Minister of Craighall, of double poinding, for the teinds of certain lands of the barony of Craighall; the LORDS found, that a tack set by the minister of Ceres of the teinds controverted, which teinds pertained to him as a part of his benefice of the parsonage of Ceres, needed not to have the consent of the Bishop of St Andrew's, and of the rest of the chapter of St Andrews, of the which chapter the parson of Ceres, who is come in the place of the Provost of Kirkhill, one of the said chapter, constituted by the second act of Parliament *anno 1617*, is now one of

No 19.

A tack let by an inferior beneficed person, for longer term than his life and five years, found not null.