tinguish the wadset, and gave an absolute and irredeemable right to Gilmerton the suspender; and as to the act of restitution, it could not prejudge, the right being long posterior, and could not be drawn back to the year 1637, there being *medium impedimentum*; and as to any possession made by the Bishop of Dumblaine, it was only *turbata possessio*, the full duty never having been paid, or acknowledged, but only a part thereof, that they might jointly concur for obtaining a warrant from the King to the Exchequer, to settle as much rent upon the Bishop of Dumblaine. But others were of another opinion, that the letters ought to be found orderly proceeded, with whom I was agreed upon these reasons; that the King being denuded of that annuity by a public mortification, making it a part of an ecclesiastical benefice, by a deed under the great seal, and the titulars by the space of twenty years, and the Kings chaplains, after suppression of Bishops, having been in constant possession by the space of fifty years, and the bishops being restored to the same rights and possession which they had when they were suppressed, which was a public law without exception of any private declaration of Kings, whereupon never any declaration or ratification followed with consent of the Treasury, was not a sufficient *medium impedimentum* to take away the possession by way of suspension, which could only be done by way of reduction or declarator; and that the act of restitution being founded upon the injuries done to the bishops in the year 1637, and restoring them as a just remedy, by this interlocutor, the benefit thereof was taken from them; so that in this case my judgment was, that it being clearly made appear, that the mortification was only of a wadset bearing a reversion, albeit never so long, did hinder the suspender having the right of reversion, to redeem the same; but that the order could never be used but against the bishops who were in present possession of the benefice, and who were only capable to receive the sums lent upon the wadset, and grant a redemption; and, the act of restitution being a public law under the Royal Sceptre before any declarator of redemption, and bearing no exception, the bishops ought to have the benefits thereof, seeing the King declares, that it was unjustly taken from them, and rescinds that authority whereby they were suppressed. No 28.

Gosford, MS. No 855. p. 540. & No 878. p. 559.

1682. *March* 20. MR JAMES GRAHAME *against* ELIZABETH OGILVIE. No 29.

FOUND, that though a minister's thirteen years possession of lands, as part of a parsonage, was a presumptive right, yet *cedit veritati*, and might be convelled by the heritor's producing his rights and infeftments; but the minister, after the thirteen years, coming in place of the heritor by a purchase, and continuing to be minister forty years, the LORDS, before answer to the prescription for the

No 29. church, appointed trial to be made, if the minister possessed as minister or heritor.

Harcarse, (MINISTERS.) *No* 688. *p.* 194.

1682. *November.* MR JOHN RUE *against* FULLERTON of Dreghorn.

No 30.

FOUND, that a minister charging upon an old decreet of locality, obtained by the former incumbent, without a decreet conform at his own instance, might be suspended upon caution without consignation.

Harcarse, (MINISTERS.) *No* 689. *p.* 194.

1683. *March* 20. BISHOP of the ISLES *against* STUART of Ascog.

No 31.
Conversion of victual, payable to a bishop, into money rent, found a contravention of act 11th, parl. 1585, and the writ containing the conversion reduced.

IN the reduction pursued by the Bishop of the Isles against Stuart of Ascog, and Stuart of Archatton, of a tack of teinds set by the Bishop's predecessor to the saids persons, which tack bore, that the saids teinds were rental bolls paid to the Bishop and his tacksman, and that the victual was converted to 20s. the boll; the pursuer having insisted upon this reason of reduction, That the tack was in diminution of his rental, and contrary to act 11th, Parliament 1585, whereby all conversions are discharged; it was *answered*, Albeit the tack bore rental bolls, yet they were never paid to the Bishop, as appears by a tack in 1606, set by Bishop Knox to an Englishman, for payment of a certain silver duty, without relation to bolls; and that this tack was presumed not to be in diminution of the rental, being immediately after the act *anno* 1606, anent dilapidations made by beneficed persons. And it being *replied*, That the tack quarrelled, bore the said teinds were rental bolls; and also a former tack in 1665 bore the same, and by a declaration under the hands of the heritors in 1636, when the annuity was statuted, they declared that these teinds were set for old rental bolls payable to the Bishop;——THE LORDS found, that, by the two tacks, and declaration foresaid, these teinds were rental bolls; and the conversion in the tack quarrelled, was a contravention of the act of Parliament 1585, and therefore reduced the said tack.

Fol. Dic. v. 1. *p.* 528. *P. Falconer*, *No* 61. *p.* 40.

*** Fountainhall reports the same case:

'THE LORDS found the Bishop hath right to the rental bolls, conform to the first assumption, and though the tack be in 1606, when Bishops were by act of Parliament then standing allowed to set long tacks, yet being after the 11th