

not bound to know these private statutes, yet *scire tenetur conditionem ejus cum quo contrahit*; and Heriot, a donor, might annex what qualities and conditions to his gift he pleased.

The Lords, on Castlehill's report, before answer, ordained the foundation and erection, or mortification, of Heriot's Hospital, with their statutes, to be produced.

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1685. *March 10.*—The reduction, mentioned 5th February 1684, pursued by the administrators of Heriot's Hospital, against Stevenson and Sinclair, of a tack of the Canon-mills, for 19 years, because of the enorm lesion, &c. being reported by Castlehill; the Lords, before answer, ordained probation to be led, what thir mills actually paid before the setting of this tack; for they considered there was some pique in this cause against the former Magistrates; and that it was not a good rule in locations, what they might have paid, or what they would give now; as also to try the custom anent appending the Hospital's seal to all their deeds, if it be essential or necessary.

The words were:—The Lords, before answer, ordain trial to be taken anent the method, which has been used in setting of tacks of thir mills belonging to Heriot's Hospital, if the samen was done by a public roup, or by intimation, and after warning of all the administrators of the Hospital; and what has been the custom of appending the seals to tacks of the mills or lands belonging to the said Hospital; and if the same has been in desuetude since making of the statutes; and also what rent has been paid for thir mills before the year 1666; and if the same was greater than the tack-duty now paid by the defender; and how long that rent was paid.

And, on the 20th of March, the Lords, on a bill given in by the Town of Edinburgh, allowed them farther to prove, before answer, that, before the setting this tack, responsal persons offered more tack-duty. *2do*, If it was set at the time of the old treasurer of that Hospital his going out, and the coming in of a new one. *3tio*, If the treasurer used to subscribe their tacks.

Then, on a bill given in by the defender, the Lords allowed her also farther to prove,—*1mo*, That, in 1666, the then tacksman's undertaking to pay 500 merks more than she now pays, helped to break him. *2do*, That the importation of malt from Musleburgh was then discharged, and afterwards allowed to the Duke of Lauderdale; which makes thir mills less worth.

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1685. *March 10.* ARCHIBALD GRAHAM, BISHOP of the ISLES, *against* JOHN CHARTERS and GEORGE WEDDERBURN, &c.

MR Archibald Graham, Bishop of the Isles, having charged John Charteris, George Wedderburn, and other merchants of Edinburgh, for £4 Scots, as the price of the teind for each last of herring taken in the seas adjacent to his diocese; they suspended on this ground,—That he has never been in possession of any such teind-duty from them, who are not the slayers and first takers, but only the buyers at the second or third hand; and that all thir *decimæ minores seu vicariæ sunt locales et consuetudinariæ, et tantum in iis est præscriptum quan-*

*tum est possessum, et non amplius*; and, even in the Popish countries, they are totally regulated by possession, so that sometimes the *quota* is not the *decima*, but the 20th or 30th part. And, on the 24th of Nov. 1665, between this same *Bishop's Predecessor*, and the *Fishers of Greenock*, as observed by Stair in his Decisions, the Lords found they had prescribed an immunity of paying any teind to the Bishop for fishes taken in their creeks, because he could not prove he had been in possession within these 40 years. And, in the case of *Mr George Shiels, minister at Prestonhaugh*, against his *Parishioners*, mentioned by Stair, *tit. Of Teinds*; the Lords found a churchman's possession of such teinds did only tie the payers, but not others in the same parish, as to such species and kinds as they had not been in use to pay. And the decision recorded by Stair, 13th December 1684, *Bishop of the Isles* against *James Hamilton*, does no ways prove his possession; but, on the contrary, ordains him to adduce probation of the custom. And, as to the demand of £4 *per last*, it is most extravagant; for, by a decision in Dury, 26th July 1631, *Bishop of the Isles* against *Shaw*, it appears the price then was only a merk the last: and as to fish taken *in alto mari*, seeing it is not determined how many miles the Bishop's jurisdiction extends beyond the shore, he can claim no teind thereof.

The Lords, upon Harcus's report, found the Bishop could not burden the Merchants of Edinburgh with any such servitude and teind-duty, unless he proved that he or his authors had been in possession of exacting and getting payment thereof.

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1683 and 1685. ROSS of TULLISNAUGHT *against* GAIRDEN of MIDSTRAITH.

1683. December 18.—THE Lords (though it was a concluded cause,) ordained witnesses yet to be adduced, anent Tullisnaught's accession to the vitiation of the paper in question, only upon a letter written by Midstraith's wife, bearing, that there were further witnesses to be got not formerly known.

Animosity arising on this process, I hear, in August, Tullisnaught meets Midstraith in the way, and wounds him.

*Quæritur* if this assault will make him criminally guilty of the falsehood, as it will make him lose the civil effects of the depending process.

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1685. March 10.—Upon advising the improbation pursued by Ross of Tullisnaught against Gairden of Migstrath, mentioned 18th December 1683;—the Lords first committed both parties to prison; and then, after trial, found the bond of thirlage (except as to four bolls of victual yearly,) was vitiated, and of *temporary* was made *perpetual*; whereupon they liberated Tullisnaught, and improved the paper as false, and detained Midstrath in the tolbooth; and the next day voted if he should be referred to the Criminal Court, as art and part, or otherwise accessory. But being chamberlain to the Duke of Gordon, they found he had not made use of it, but only found it among his father's papers; and so *minime constabat* who had falsified it: yet they fined him in L.1000 Scots of expenses to the pursuer, and ordained him to lie in prison till it were