

1693. December 16. LORD WILLIAM DOUGLASS, *against* MR WILLIAM VEITCH, Minister at Peebles.

THE Lords advised the mutual actions between Lord William Douglass, and Mr William Veitch, minister at Peebles, who raised a reduction of the tack of the teinds, set by Mr John Hay, last parson there, to Inchnock, for behoof of his wife and children. The Lords repelled the first reason, that it was not a delivered evident; and found it proven that it was delivered, at least made use of in processes in his lifetime. As also, they repelled the second reason, that it was a latent clandestine tack, never clad with possession in the granter's lifetime, and so alleged to be null; and that the granter had retained the possession: for the Lords, upon advising the probation, found that it had attained possession, and was made public in his lifetime, by serving inhibitions in the tacksmen's names, and pursuing spuilies of teinds. And though it was also proved, that the setter used some acts of possession, yet the Lords found, that his possession was his wife's and son's, as being administrator of the law to them both; and though they were in possession of some teinds, and not of others, yet, in all thir cases, the possession of a part did clothe the whole. And they argued from the parallel of a base infestment, which is made public by a citation upon a summons for poinding of the ground, though it be there only *in adipiscenda possessione*. Then Mr Veitch's lawyers urged, that this tack being a donation to a wife, it was revokable, and *de facto* revoked by him; in so far as he had set posterior tacks of some parts of thir teinds, to some of the heritors, posterior to this tack.

The Lords found this *jus tertii*, and incompetent to Mr Veitch; unless these were compearing and producing their tacks, and competing. The *third* reason of reduction was upon dilapidation; that it was to the evident lesion of his successor, and diminution of the benefice; contrary to the 101st Act 1581.

ANSWERED.—*1mo*. That act is only prohibitory of diminution of the rental of benefices, as they stand at the time of their entry; but *ita est* Mr John Hay found it under tack at his entry, and the tack-duty only 900 merks, whereas he has now improven the rental, by making it 1200 merks of tack-duty, which Mr William has right to. *2do*. The posterior laws derogate from this; for, in 1617 and 1621, there are express acts allowing parsons to set tacks of their teinds, with the patron's consent, for five years after their decease.

The Lords considered, if this doctrine held, all the tacks of teinds in Scotland would be null, unless the tack-duty corresponded to the full intrinsic value of the benefice; and, therefore, repelled also this reason, and sustained the tack as a valid and legal deed. And when the years of it expire, then Queensberry, the patron, by the new Act of Parliament 1693, will have right to the whole teinds, with the burden of a modified stipend; which Mr William, or any other minister at Peebles, may procure to be settled by a pursuit before the Commission for Plantation of Kirks, who may augment it above 1200 merks, in regard of the opulency of the teinds. But if the second tack set by the parson had been done with all the formalities of the patron's consent, and the chapter's, as the first tack was, then there had been more to say; both for their being public, and for his design of revocation of the first solemn tack, by a deed as formal as it was.