

P E N S I O N.

1588. February. STUART against DOUGLAS.

COLONEL STUART and Commendator of Pittenween pursued Sir George Douglas, to hear the gift of a pension given by his unquhile brother, James Earl of Murray, forth of the benefice of Pittenween to be reduced. The reason of the summons was, because the said Sir George had never apprehended possession of the said pension before the decease of the Earl his brother, who was the giver thereof, et sic dans et retinens nihil inde ex hac donatione sequitur; and also it was *alleged*, that quemadmodum in feodis feodum absque investitura esse not potest, et in investitura apparet scripto possessio, ead. feudi lex ex investitura, similiter ut ait Bald. ibid. quod similiter in pensionibus, quia omne jus possessoris in possessione dependit; et manifesti juris est pensiones super beneficiis constitutas per possidentem beneficia non adherere beneficio, nec eos qui in eo succedant obligare, sed constituens tantum personam, et non rem ipsam, prout in cap. de prebendis et in jure canonica, non licet personæ pensionem in titulum dare ut in titulo, ut beneficia ecclesiastica sine diminutione conferantur; and so, by reason of the foresaid laws, the disposition of the pension made to Sir George by his brother, then prior for the time, could never oblige the successor, *attento hoc maxime*, that he got never possession during the time of the giver. It was *answered* by Sir George, That he had, conform to his pension and gift thereof, obtained two sundry decrees against the immediate successors of the Earl of Murray, disputer thereof, viz. against Sir James Balfour, then prior, and then against Mr James Haliburton Provost of Dundee, who succeeded after Sir James; and also he had made interpellation against the tenants and feuers, the time of the Earl giver of the said pension, and had obtained protestation against them, as the same was shown in process; and that their apprehending of real possession could not make his pension better or worse; et similitudo illa quæ ducta fuit a feodis et investitura ad pensiones et earundem possessionem non tenet, quia

No 11

A gift of pension out of a benefice found valid, though it did not take effect by possession during the life of the donor.

No 1. feuda transeunt in heredes et non pensiones, et quamvis large sumend. feudum dicitur beneficium et sic pensio potest applicari ad feudum, quia possessio beneficium, non possessio feudi, presente argumentatur, tamen consequens ex præmissis non potest inferri, quia pensio neque beneficium neque pars beneficium ullo modo dici potest, et hoc legibus et juribus prædictis, et nulla ratio neque lex auferrî potest prout allegabat. THE LORDS, after long reasoning at the bar, *in præsentia regis*, found the reason of the summons irrelevant, licet magna pars in contraria fuerunt opinione.

Fol. Dic. v. 2. p. 55. Colvil, MS. p. 438.

No 2.
A gift of pension by a bishop, without consent of the chapter, being clothed with possession, found to subsist during the bishop's life.

1593. March. HUTCHISON against KERR.

ANE Bogill in Glasgow raisit multiple-pounding agains Bishop Erskin, on the ane part, Mr Henrie Kerr, having ane pensiou of twa chalders victuall furth of the reddiest fruttis, on the secund pairt, and George Hucheson on the third. Mr Henrie producit his pension, George Hucheson producit ane gift of pension, granted in lyfrent to his father and to himself be Bishop Betoun, be vertue whair of thay had bene in possession thir mony zeirs. Mr Henrie *allegit*, That notwithstanding thair of, he aucht to be answerit and obeyit, becaus the said gift disponit to Hucheson be the Bishop wes null, being set be the Bishop without consent of the chaptour; and albeit it micht have obleissit the Bishop not to run in the contrare thair of in his lyf tyme, yet he being *mortuus civiliter*, being forfalted, could not prejugè his successouris, and pairties having rycht flowing fra thame; notwithstanding the whilk alledgeance, the LORDS fand, thay wald not tak away the gift cleid with sa mony zeirs' possession in ane doubill poynding, bot ordainit the said Hucheson to be answerit and obeyit.

Fol. Dic. v. 2. p. 55. Haddington, MS. No 400.

No 3. 1614. June 30. ANDERSON against M'CALL.

IN an action pursued by David Anderson *contra* David M'Call, the LORDS found a pension out of a coal real, and therefore decerned letters for poynding of the coal, win, or to be win.

Fol. Dic. v. 2. p. 55. Kerse, MS. fol. 95.

1622. June 30.

No 4.
A Bishop granted a

BISHOP of ABERDEEN against His TENANTS, and the LO. DRUMLANRIG'S SON.

IN a double poynding pursued at the instance of some of the tenants of the bishop-lands of Aberdeen against the L. Corss, being then Bishop, on the one