

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 auferrè 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

fact, and Douglas, son to the Lo. Drumlanrig, on the other part, either of them claiming right to the duties of the lands, the Bishop as a part of the patrimony of the Bishoprick, and the other claiming the same by virtue of a pension given by umquhile ——— Bishop of Aberdeen, to ——— Douglas of Tofts, during his lifetime, containing power to transfer the same to an assignee at any time in his lifetime, and upon the which pension decret conform was obtained by the pensioner, and continual possession had by him of the duties converted, which were assigned in the pension for satisfaction of the same; which pensioner, conform to the clause and power of the pension, had transferred and assigned the same in favours of the said ——— Douglas, the other party now complained upon, by a lawful disposition of the same made to him by the space of a year and a half, or two years at most before his decease, and who deceast but by the space of a year at the most before the dependence, after whose decease the said ——— Douglas, to whom the pension was assigned, had intented his action of letters conform, and in respect thereof, he alleged that he ought to be preferred to the Bishop. THE LORDS repelled the pensioner's allegiance, and found the Bishop had right to the duties foresaid, and not the pensioner's assignee, because it was alleged by the Bishop, that the pensioner, notwithstanding of his translation made in favours of this party, had remained in possession of the said pension during his lifetime, and the assignee never apprehending possession, nor making intimation of his right, could not claim the right after his author's decease, which took no effect by possession in his author's lifetime, as said is, nor no intimation being made thereof; which allegiance of want of possession and intimation in the pensioner's lifetime, the LORDS found relevant to cause the assignation become simulate and extinct; albeit it was answered, That the want of possession could not make a right which was lawful of itself, and which was made by one having power to make the same (and whose power was confessed by the party) to fall, seeing the pensioner, or his executors, would be countable to the party defender for the duties uplifted and possess by him ever since he was denuded; which was repelled by the LORDS, and the Bishop's allegiance found relevant, as said is.

Act. Nicolson sen. et Lermontb.

Alt. Nicolson jun. et Mowat.

Clerk, Scot.

Fol. Dic. v. 2. p. 53. Durie, p. 27.

* * Haddington reports this case :

IN a double-poining, the Bishop of Aberdeen, and Douglas, son to the Laird of Drumlanrig, being parties, Douglas *alleging*, That he should be answered and obeyed, because he was assignee constitute by umquhile Archibald Douglas of Tofts, to a pension of L. 500, furth of the Bishoprick of Aberdeen, granted *anno 1575* to Tofts, *cum potestate transferendi*; it was answer-

No 4.

pension out of his patrimony during the pensioner's life, with power to assign at any time before his death. The pensioner assigned two years before his death, retaining possession. The assignee claimed after the pensioner's death. The Lords preferred the Bishop's successor on act 139. Parl. 1592, there having been no intimation.

- No 4. *ed*, That his assignation was null, because it was granted to him in *anno* 1618, whereof he never made intimation, obtained possession nor letters conform, but the cedent retained possession three years after the assignation, to the time of his decease; and therefore the assignation was simulate and null, proceeding from him *qui dedit et retinuit*.

Haddington, MS. No 2640.

1623. February 27. PAIP against L. WOLMET.

No 5.

IN an action of suspension betwixt Mr John Paip and the L. of Wolmet, for payment of a pension of diverse loads of coals given to Mr John Paip; the LORDS found, that the granter of the pension, nor his heirs, were not obliged to carry the coals to the dwelling-house of the pensioner, where the pension bore not the same *specific*; but that it was sufficient to the granter of the pension, and his successors, addebted therein, to deliver the same at the coal-hill to the pensioner, to be transported upon his own charges where he pleased to carry the same; and that sicklike in other pensions of that nature and quality, as of victual, that the pensioner ought to carry the same from the barn door and ground of the land upon his own expenses, and that the granter is not obliged in the said carriage, except the pension be so expressly granted, and no otherways.

Act. *McGill*.

Alt. ———.

Clerk, *Hay*.

Fol. Dic. v. 2. p. 56. Durie, p. 537.

* * * Haddington reports this case :

1623. February 28.—MR JOHN PAIP having a pension of four bolls meal, and two dozen loads coals, to be paid to him yearly by the Goodman of the Wolmet, pursued him to lay them in to him in his house in Edinburgh. Wolmet *alleged*, That he should not carry them, but only pay them. THE LORDS found, that since he was only bound to pay them, he could not be compelled to lay them in, but only pay them on the coal-hill.

Haddington, MS. No 2793.

No 6.

A prelate granted a pension out of his patrimony, not only *cum potestate transferendi etiam*

1625. July 23. MINISTER of KIRKLISTON against WHITELAW.

IN an action betwixt the Minister of Kirkliston and Patrick Whitelaw, a pension being granted by the umquhile Bishop of St Andrew's to Mr John Arthur, Commissary of Edinburgh, *cum potestate transferendi etiam in articulo mortis*, with power also to that assignee, to transfer the same at any time, be-