

No 19.

1624. *November 16.*—IN the above mentioned action of Mr Thomas Hope, whereof mention is made 9th November 1624, the LORDS found a procuratory of resignation subscribed by the Provost and his prebendars, of a part of his benefice, which prebendars dwelt in diverse parts of the country, so that their subscriptions could not be had at one time, and, therefore, the procuratory behoved to be of diverse dates, as the same was subscribed by the prebendars, albeit the instrument of demission, following the said procuratory, was of a date anterior to some of the dates of the procuratory, viz. before the time that some of the prebendars subscribed the same, yet that the procuratory and demission foresaid was sufficient, seeing it is the frequent custom to take consent of prebendars, or of chapter, or convent, at any time, to deeds done by the prelate, and after the date of the principal's subscription; albeit it might appear, that seeing the prebendar's consent was necessary to the procuratory, without which it could not be a perfect act, therefore, while the same was made perfect by all the subscriptions necessary, the instrument of demission, which could not be valid without warrant of the procuratory preceding, ought to have been made after the procuratory was a compleat and perfect evident, which could not be, until it was subscribed by all the prebendars requisite thereto. *Vide 23d January 1624, M'Moran against Black, voce WRIT.*

Act. Hope.

Alt. Stuart & Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 529. Durie, p. 144, & 147.

1629. *March 26.* COLLEGE of Aberdeen *against* MENZIES.

THE College of Aberdeen having the deanry of the cathedral kirk of Aberdeen annexed and mortified to them, pursue reduction of certain tacks of lands pertaining to the deanry, set by the said college, because the same was not with consent of the Bishop and remanent members of the said cathedral church; and the defender *alleging*, that there was no necessity of any of the of the chapter's consent, seeing the deanry was mortified to the College, to whom the rents and fruits of the deanry did belong, and whose consent he had, and which was set by them; the LORDS found the tack null, wanting the consent of the chapter; for albeit the deanry, and fruits, and rents thereof, were mortified to the College, yet the dignity was not thereby extinct, for thereby the College came in place of the dean, and as deeds done by the dean, before the mortification, required the consent of the rest of the chapter, so the deeds done by the College required the like solemnity, they being only become in the dean's place.

Act. Nicolson.

Alt. Cheap.

Clerk, Scot.

Fol. Dic. v. 1. p. 527. Durie, p. 443.

No 20.

The consent of the chapter found necessary to give effect to a tack.