

1631. *February 15.*MR ALEXANDER CHRYSTISON *against* MR ALEXANDER ANDERSON.

No 21.
Churches
united by
parliament,
could not be
disunited by
the bishop, or
otherwise
than by par-
liament.

THE kirk of Auchtergiven and the kirk of — being united by act of Parliament 1617 in one, and one minister ordained to serve the cure at both; the Bishop of Dunkeld, being bishop of the diocess, appoints one of these kirks to be served by the one minister, and the other kirk by the other minister foresaid, and divides the stipend betwixt them, the whole being 80 bolls of victual only, and appoints, with advice of the presbytery, Anderson who was then actual minister at Dowallie, to be transported from that kirk, where he was provided to the said kirk, which was so divided; and the said two ministers by contract perfected betwixt them, and delivered to the bishop, ratified each one to others, the provision of the said kirks, and each one of them should uplift the half stipend, modified at the uniting thereof; a year or two thereafter, the bishop gives presentation to Chrystison of both these kirks united, and appoints him minister at them both; whereupon in a double-pounding, the two ministers contending for the stipend, the one claiming the whole by the foresaid presentation, and letters conform thereon; and the other in respect of the act of transportation, done by the presbytery and bishop, which he alleged to be as good as the presentation of the bishop, and in respect of the foresaid contract, claiming the half; the LORDS preferred the minister presented, viz. Chrystison, to the other for the whole stipend, notwithstanding of the said contract and act of transportation; seeing they found, that a kirk so united by Parliament, could not be loosed, disunited, nor altered by the bishop, nor no other but by the Parliament; neither could the foresaid contract oblige the parties thereto, there being a posterior presentation granted of the kirks united to the foresaid Chrystison, after the foresaid contract and transportation, and which was authorised by decreet, and letters conform. Likeas Chrystison offered to prove, that the other minister continued still minister at Dowallie, where he was provided, and served before, and still uplifted the stipend of that kirk; which the LORDS found relevant, and admitted to probation, for it was not found reasonable, that he should have the whole stipend of his own kirk, and seek the half of a small stipend at another kirk.

Act. *Stuart.*Alt. *Mowat*Clerk, *Gibson.**Durie, p. 569.*1631. *July 26.*The BISHOP of the Isles *against* JOHN SHAW and BRICE SEMPLE.

IN a reduction of a tack of the fishing of the Isles pursued by the Bishop of the Isles, against John Shaw and Brice Semple, the first reason was, that it

was set *a non habente potestatem*, viz. by Bishop Thomas, whose predecessor, Andrew, had set one of the same fishings before to the boroughs. *Alleged*, this was not a competent reason to the pursuer to reduce upon, because *sive sic, sive sica*, he was to have no benefit by it as long as any of the two tacks stood, and it was only competent to the boroughs to reduce upon this reason. THE LORDS repelled the allegiance, and sustained the interest upon this same reason.

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Fbl. Dic. v. 1. p. 528. Spottiswood, p. 328.

* * * See Durie's report of this case, No 17. p. 5630, *voce* HOMOLOGATION.

1636. July 9. TENANTS of Hyndwood *against* The MINISTER of Coldingham.

THE Tenants of Hyndwood suspending in a double poiding against the minister of Coldingham, claiming their viccarage-teinds as a part of his stipend on the one part, and against the Lady Ayton, and Laird of Blackadder, her spouse, on the other part, the Lady claiming the same as a tackswoman by virtue of a tack of the same viccarage teinds, set to her by Mr William Douglas of Stanypath, minister at the said kirk for the time; who then had right to the said viccarage-teinds, set to her during all the days of his lifetime, who yet lives; and the present minister replying, that Mr William Douglas was never provided by any presentation to the viccarage, as a distinct benefice, but was only a stipendary minister, and had the viccarage-teinds assigned to him, as a part of his stipend, so that he could set no tack of these viccarage-teinds, which could endure longer space than during the time of his service at the said kirk, in prejudice of the succeeding minister, who was to be provided to the charge, no more than he could set any tack of the rest of his stipend, which could have no longer endurance; for otherwise, the entrant ministers might be sensibly wracked, and their stipends reduced to such a small proportion, whereupon they could not live; the LORDS found, that this tack could not defend the Lady, the setter being removed, and serving the cure at another kirk, albeit he be yet in life; seeing the viccarage-teinds are assigned to the minister, serving the cure at the kirk libelled, as a part of the stipend, wherein he cannot be prejudged by the minister his predecessor; these teinds not being bruiked by any person provided to the viccarage, as a distinct benefice by any distinct or several presentation, but being annexed to the minister, and allotted for a part of his stipend; so that he being a stipendary minister, he could not set any tack which could last longer than he remained actual minister at that kirk, of any part of these teinds, nor any other part of his stipend, thereby to prejudge his successor, or

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In a competition for viccarage teinds, the incumbent found preferable to a person having a tack from a former minister, who had been only a stipendary.