

the spirituality of Glasgow, they obtained a decret of reduction of this tack, the minister being called, and the reason of reduction was, in respect Drysdale was not a parsonage, but a mensal kirk of Glasgow, and the minister had never more from the bishop, but an assignation to so much of the teind as he was pleased to give him. It was *answered*, That the reduction was not obtained till the 1656, and the minister being in possession 15 or 16 years before, though the tack be reduced, yet his possession, without respect to the tack being so long, it ought to give him as minister, a good right to the stipend he enjoys, being no more, but rather less, than the law allows to ministers. Likeas, Lockerby got a new tack from the town of Glasgow, which reserves what is allocated to the minister, and there being no other allocation than has been allowed to him by his possession, he ought to continue therein; especially, seeing the teinds are able to pay both the tack-duty payable to the town of Glasgow, and the quantity also contained in the charge. Likeas, he passeth from the charge, in so far as it is founded upon the tack, and insists only as minister serving the cure.

THE LORDS sustained the charge for the quantity, whereof the minister has been so long in possession, the minister's stipend being no greater than what is allowed by law.

*Gilmour, No 2. p. 2.*

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1665. June 27. ALEXANDER FERGUSON *against* STUART of Askeoge.

ALEXANDER FERGUSON having obtained a presentation from the King, as one of the prebendaries of the chapel-royal, and thereupon a decret conform, and having charged Stuart of Askeoge, he gives in his special charge, that the parish of Inchgarth, which is now annexed to Rothesay, belonged to his prebendary, as being a part of the patrimony of the chapel royal. It was *answered* for Askeoge, That he bruiks the teinds by virtue of a tack granted by Mr Ninian Stuart minister of Rothesay, whereof this kirk now annexed is a part, and that there is nothing appears to instruct that these teinds were ever mortified to the chapel-royal, or that the chapel-royal was in possession thereof. The pursuer *answered*, That seeing he had the King's gift and decret conform, it was sufficient, unless the defender would allege, that the said Mr Ninian Stuart had a better right, or was in possession; for the King being the common author and fountain of rights, his Majesty's gift is sufficient against any that show not a better right; and as for the tack produced, it is null, being for 19 years, without consent of the patron. The defender *answered*, That albeit both parties were in *acquirenda possessione*, yet *decimæ debentur parochæ, ejusq. præsumuntur nisi aliter appareat*; and therefore unless these teinds have been transmitted from the parson of the parish, by long possession or mortification, they are his, and the King's gift alone cannot take them from him; but here the parson has

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Teinds were found due *parochæ*, notwithstanding the King's gift.

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been in possession, by setting the tack produced, which is sufficient as to possession, albeit it were null by exception, as it is not; and the nullity thereof is only competent to the person of the granter, and not to this pursuer.

“ THE LORDS found the King’s gift and decret conform, with institution and collation was not sufficient, unless either the mortification of these teinds or the prebendar’s possession were instructed.

*Stair, v. 1. p. 287.*

1665. July 21.

GAVIN HAMILTON *against* DUKE HAMILTON and BISHOP of EDINBURGH.

No 27.

GAVIN HAMILTON, as assignee by the collector of vacant stipends, charges the parishioners of Crawford. Compearance is made for the Bishop of Edinburgh, *alleging*, that this was a patrimonial kirk of the bishoprick of Edinburgh, and so was not comprehended in the late act of Parliament anent vacant stipends.

THE LORDS repelled the defence, and preferred the collector of the vacant stipends; for they found the act was general, without any such exception.

*Stair, v. 1. p. 400.*

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1676. July 11. The BISHOP of DUMBLAIN *against* KINLOCH.

A party held an annualrent right over lands, which were afterwards resigned to the King, and by the King mortified to a bishoprick. The bishops were suppressed, and afterwards re-established. While suppressed, the debt was paid to the King, who gave a grant of redemption. The grant of redemption was sustained, tho’ without the consent of the Officers of State.

IN *anno* 1596, the Earl of Bothwell having borrowed, from one Thomas Craig advocate, 7000 merks, did, for security thereof, infest him in ten chalders of victual out of his lands of Hails and Truprain, redeemable upon payment of 7000 merks, by a clause of reversion in the contract, obliging himself to a reversion, being infest. This annualrent was acquired by John Murray, thereafter Earl of Annandale, and by him resigned to King James VI. who, in *anno* 1620, mortifies the same to the Bishop of Dumblain, as Dean of the Chapel Royal, who possessed the same till the expulsion of Bishops in *anno* 1638. The Earl of Bothwell being forfeit, the right of these lands, out of which the annualrent was payable, came by progress, in the person of Sir George Seaton, who, in *anno* 1651, paid the 7000 merks to the King, and obtained from his Majesty a grant of redemption at Stirling, immediately before he went to Woster; yet the King having given an assignation to his chaplains, they continued to possess; and, after the restitution of Bishops, Bishop Leighton did possess; and now Bishop Ramsay succeeding, charges Francis, who has succeeded to Sir George Seaton in the lands, out of which this annualrent is payable, who suspends, on this reason, that his author had redeemed the annualrent from the King in *anno* 1651, when the Bishops were suppressed, and the King had the only title. It was *answered* for the charger, *imo*, That this annualrent being