

ed his author was infeft. THE LORDS having considered these practicks as not meeting directly with the case in question, they did determine by their interlocutor, that a tack clad with seven year's possession without any interruption, was a sufficient title to defend in an action for mails and duties, ay and while it were reduced, and so assoilzied the defender in this possessory judgment; but withall, declared the tenants liable for all mails and duties resting in their hands unpaid to the tacksman, and in time coming while the tack be reduced.

No 37.

Gosford, MS. No 912. p. 589.

1681. February 4.

ROBERTSON *against* ARBUTHNOT

MR THOMAS ROBERTSON, minister at Longside, having obtained decret against Arbuthnot of Carugal for the vicarage of his land, which being turned into a libel, the defender *alleged*, No process; because the pursuer had neither locality nor possession, and his presentation is limited to the possession of his predecessor. It was *answered*, That the pursuer hath sufficient title by his presentation, and is founded in *jure communi*, that *decimæ debentur parochæ*, either parsonage to a parson or vicarage to a vicar. THE LORDS sustained the pursuer's title. The defender further *alleged*, That these vicarage teinds were a part of the patrimony of the abbacy of Deer, erected in favours of the Earl of Marischal, from whom the defender and his predecessors had tacks for terms to run, and by virtue thereof have been seven years in possession, and thereby are secure till the tack be reduced, and have also been forty years in possession, and thereby all action against his tack is prescribed, albeit the setter had had no right, and cannot be questioned till the years of its endurance be ended.

No 38.
Found in conformity with Home against Scot, No 37. *supra*.

THE LORDS found both these defences relevant *separatim*.

Fol. Dic. v. 2. p. 90. Stair, v. 2. p. 855.

1683. January 17.

CANT *against* AIKMAN.

No 39.

CANT having pursued a poinding of the ground of the lands of Thurstane, for payment of an annualrent wherein he stood infeft; and Aikman having *alleged*, That he ought to have the benefit of a possessory judgment, being infeft in the property of the saids lands, and seven years in possession; the LORDS found, that a possessory judgment was only competent in the competition betwixt two rights of property; but that it was not competent to be proponed against a right of annualrent, that being a right of another nature, and which was compatible with a right of property and possession by virtue thereof: But