

No 29. church, appointed trial to be made, if the minister possessed as minister or heritor.

*Harcarse, (MINISTERS.) No 688. p. 194.*

1682. *November.* MR JOHN RUE *(gainst)* FULLERTON of Dreghorn.

No 30.

FOUND, that a minister charging upon an old decret of locality, obtained by the former incumbent, without a decret conform at his own instance, might be suspended upon caution without consignment.

*Harcarse, (MINISTERS.) No 689. p. 194.*

1683. *March 20.* BISHOP of the ISLES *against* STUART of Ascog.

No 31.

Conversion of victual, payable to a bishop, into money rent, found a contravention of act 11th, parl. 1585, and the writ containing the conversion reduced.

IN the reduction pursued by the Bishop of the Isles against Stuart of Ascog, and Stuart of Archatton, of a tack of teinds set by the Bishop's predecessor to the saids persons, which tack bore, that the saids teinds were rental bolls paid to the Bishop and his tacksman, and that the victual was converted to 20s. the boll; the pursuer having insisted upon this reason of reduction, That the tack was in diminution of his rental, and contrary to act 11th, Parliament 1585, whereby all conversions are discharged; it was *answered*, Albeit the tack bore rental bolls, yet they were never paid to the Bishop, as appears by a tack in 1606, set by Bishop Knox to an Englishman, for payment of a certain silver duty, without relation to bolls; and that this tack was presumed not to be in diminution of the rental, being immediately after the act *anno* 1606, anent dilapidations made by benefited persons. And it being *replied*, That the tack quarrelled, bore the said teinds were rental bolls; and also a former tack in 1665 bore the same, and by a declaration under the hands of the heritors in 1636, when the annuity was statuted, they declared that these teinds were set for old rental bolls payable to the Bishop;—THE LORDS found, that, by the two tacks, and declaration foresaid, these teinds were rental bolls; and the conversion in the tack quarrelled, was a contravention of the act of Parliament 1585, and therefore reduced the said tack.

*Fol. Dic. v. 1. p. 528. P. Falconer, No 61. p. 40.*

\*.\* Fountainhall reports the same case:

'THE LORDS found the Bishop hath right to the rental bolls, conform to the first assumption, and though the tack be in 1606, when Bishops were by act of Parliament then standing allowed to set long tacks, yet being after the 11th

act of Parliament 1585, discharging any conversion of victual into money, they find the church lesed by the smallness of the price in the conversion, and therefore reduce tack.'—This is a leading case, and opens the door to the reduction of many such tacks. The Bishops are now talking, that, when the Parliament shall sit, they would have an act of Parliament binding them up, that they may not have power to set tacks of their teinds for nineteen years, to wrong the next successor, but only during their lifetime, as other inferior clergymen do; that these casualties may not be forfeited and given away from the next incumbent, who may not out-live the expiration of that tack set by his predecessor. But, at this rate, few would take tacks from them, at least would give little or nothing for grassums and entries of so uncertain a tack. However, ere long the tacks of many teinds will fall through Scotland, though set for many nineteen years before the restraining act in 1617; and then they will either fall in the hands of the kirkmen, or of the titulars and Lords of erection. These long tacks of teinds were invented, because teinds after the Lateran Council might not be perpetually given away in feu, as being *juris sacri et divini*; and it is wondered how the laymen consented to the abridging the clergy's unlimited power in setting such tacks.

No 31.

Fountainhall, v. 1. p. 227.

1685. *March.* MR WILLIAM BARCLAY *against* The COLLEGE OF ST ANDREWS.

No 32.

IN an action at the instance of a minister against the College of St Andrews, for payment of L. 40 of augmentation to the pursuer, as *decennalis et triennalis* possessor thereof by a presumed right;

*Alleged* for the defender; The foresaid rule of chancery presumes only a minister's title to be good where it is not produced; but where it is produced, as here, it may be convelled by nullities, and *præsumptio cedit*. And the pursuer's title to the L. 40 is null; for that though it flows from the college, it is not subscribed by a *quorum* of the masters appointed by the foundation.

THE LORDS sustained the allegiance for the college, and assoilzied.

*Harcarse, (MINISTERS.) No 694. p. 196.*

1686. *December.* MINISTER OF LOGIE *against* The HERITORS.

No 33.

THE designation of a minister's glebe being quarrelled as half an acre more than the four allowed by law;

*Alleged* for the minister; That he and his predecessors had been thirteen years in possession.

*Answered*; *Decennalis et triennalis possessio non relevat in petitorio*; *2do*, This presumptive title *cedit veritati*; for the true title being the designation of