

No 97.

1677. July 7. PARSON of Prestonhaugh *against* his PARISHIONERS.

A TACK of teinds null, as being let without consent of the patron, was found validated and unquarrellable, by forty years possession.

*Fol. Dic. v. 2. p. 104. Stair. Gosford.*

\* \* \* This case is No 61. p. 10761.

\* \* \* Similar decisions were pronounced, 4th February 1681, Robertson *against* Arbuthnot, No. 38. p. 10643. *voce* POSSESSORY JUDGMENT, and 14th July 1675, Collège of Aberdeen *against* Earl of Northesk, No 63. p. 7230. *voce* IRRITANCY.

1696. June 27.

The EARL of LEVEN *against* the HERITORS of the Parishes of KENNOWAY and MARKINCH.

No 98.

Found also in conformity with the case of Prestonhaugh, *supra*.

In a spuilzie of teinds, pursued by the Earl of Leven *against* the Heritors of the parishes of Kennoway and Markinch, their defence was upon a liferent tack, set to Sir George Douglas, and two heirs' lifetimes, and 19 years thereafter, from whom they had sub-tacks. *Alleged*, The sub-tacks were null, because tacks of their own nature are *strictissimi juris*, and not mentioning assignees, this tack was not assignable. *2do*, It is only provided to heirs actually entered and served, which they were not. *Answered*, Though short tacks are not assignable, yet liferent ones have ever been sustained to be transmitted by assignation, and to be appraisable, as was found, Home *contra* Craw. No 53. p. 10371.; Duff *contra* Foulter, No 95. p. 10282.; 16th November 1680, Drummond *contra* Dalrymple, *voce* TACK. To the *2d*, *Esto* they were not served heirs, yet, being clad with possession, they were *bona fide* possessors for all bygones, by virtue of their sub-tacks: But, *3tio*, Whatever nullities could be obruded *against* their sub-tacks, the same are all now supplied by prescription, they having bruiked the teinds these 40 years, in right of these sub-tacks, without interruption. The Lords sustained the answer, and found these sub-tacks sufficient to defend them during the years of the tack and prorogation yet to run. See Stair's Instit. B. 2. T. 12. and 7th July 1677, Minister of Prestonhaugh, *supra*.

*Fol. Dic. v. 2. p. 104. Fountainball, v. 1. p. 724.*