

the solemnities, which were the common seal, and the consent of the chapter, he left that to be purchased by Cumnock himself; and in the mean time, Cumnock became in possession by virtue of the same, and the parson had received his duties from him, *et sic nullo pacto contradicere potent proprio facto*. To this was *answered*, by reasoning among the LORDS, that whatsoever was done by the parson's consent, it might derogate to the law, *et jus publicum privata illius conventionione tolli non potuit, et ubi carta forma jure statuitur in actibus hominum illud privato alicujus pacto tolli non potest, de qua re vide Bald. L. 29. C. De pactis*, and so the party might be ay heard to propone a nullity of the law against the thing that is done by his own consent *et imperite*. *Allegebant advocati in L. 4. § 6. D. De re judicata, quod non dicitur aliquis condemnatus nisi justa sententia condemnatus fuerit, et L. 4. D. De exercitoria actione, ubi plures sunt proposita magistri sub conditione ne alter sine altero quid gerat, si aliter gestum fuerit non tenet*. THE LORDS, after long reasoning, found by interlocutor, that albeit the nineteen year's tack was not perfect, and wanted the solemnities requisite of the law, yet the setter thereof, in so far as he had bound himself to do the same, and had received the duties of the tack, could not be heard to say any thing against it *in judicio possessorio*.

*Fol. Dic. v. I. p. 529. Colvil, MS. p. 390.*

No 11.

1584. February. VICAR of Gaston against VALENTINE.

No 12.

The vicar of Gaston, called Cunningham, set a tack of his vicarage to one Valentine, for the space of three years, and from three years to three years, during all the time of his lifetime. It was *objected*, that the tack was expired by the decease of the vicar, and the tacksman could not thereafter be answered of the vicarage, nor bruik the same by virtue of the said tack. It was *answered*, that the tacksman was entered into the possession of the last three years, and had bruiked the vicarage the other six years preceding, and so notwithstanding the decease of the vicar, he ought to bruik it for the last three years, the which was found by the LORDS.

*Fol. Dic. v. I. p. 528. Colvil, MS. p. 397.*

1591.

MELVIL against ———.

MR WILLIAM MELVIL commendator of Tun gland, being provided to the abbacy of Kilwinning, after the slaughter of the commendator thereof, his right was questioned as null of itself, *per regalum 28 cancellariæ, de veri-similitudine: Num beneficium vacare debet antequam alio detur; et tantum temporis post vacationem effluere debet, quantum sufficiat illum ad notitiam summi pontificis pervenire*; but so it was, that his provision was dated 1st August, on which

No 13.

- No 12. day at five o'clock in the afternoon his predecessor was slain, *ita ut veri-similiter ejus notitia ad principem tam cito pervenire non potuerat*. Answered, That that rule and law of the Pope did not oblige the King's subjects, the Pope's jurisdiction being abrogated. The LORDS found, that the rule *de verisimili notitia* should have place, not for the authors of the law, *sed propter rationem legis, quæ est anima legis, viz. ne detur occasio captandi mortem alterius*.

*Spottiswood, p. 187.*

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1610. February 22. HUNTER against CRICHTON.

No 13.

IN an action of reduction of a tack set by James Blackwood, parson of Sanquhar, to the tutor of Sanquhar *contra* William Crichton of Eyhill, son and heir to the tutor, and against Robert, Lord Crichton, of Sanquhar, assignee to the said tack, which was desired to be reduced at the instance of Mr Robert Hunter, parson of the said kirk of Sanquhar, upon this reason, that James Blackwood, setter thereof, was lawfully deprived in 1577, it was found by the LORDS, That the reasons of reduction were relevant to reduce the said tack, notwithstanding it was answered thereto, that the time of the said deprivation, the kirk had no power to deprive, but *ab officio* allenary, and not *a beneficio*, and that the warrants of deprivation *et ab officio et a beneficio* was long after the date of the said tack, viz. in *anno 1584 et 1594*, which is expressly extended *ad præterita*, and in respect that James Johnston, setter thereof, was deceased long before the intending of the cause.

*Kerse, MS. fol. 40.*

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1611. January 23. RAMSAY against MAXWELL.

No 14.

HE who obtained a tack of vicarage teinds, not apprehending possession by virtue thereof before the demission of the benefice by the setters, if he who is thereafter provided obtain peaceable possession many years, the tacksman will not be habile to controvert with him, if his tack apprehended not possession.

*Fol. Dic. v. 1. p. 528. Haddington, MS. No 2113.*

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1612. January 9. HOME against HOME.

No 15.

IN the action of spuilzie of teind-sheaves, pursued by Sir John Home of Huttonhall against Robert Home, it was found that a tack of teinds set by Mr Thomas Ogilvie parson of Dunglas, to Sir John Home, his entry thereto to be at the day of the said Thomas his decease, was null, as conferred *in tempus indebitum*; and when Huttonhall *replied*, that the successor to the bene-