

former tack, being twenty years ago, and the liferenter herself having possessed and laboured the same until the lands were much deteriorated; in consideration whereof she gave the abatement on the new tack.

It was REPLIED, That the pursuer's receipts could infer no homologation, because they were only partial of what she had received, and not of the full tack-duty.

The Lords did find it relevant, that the pursuer knew of the defender's tack, and, notwithstanding, suffered him to possess without any interruption, and ordained her to give her oath upon the verity of her knowledge; but, if she denied the same, they declared they would grant commission to some neighbours, to try if the lands were deteriorated the time of the last tack, or were in as good condition as when the former tack was granted.

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1674. *January 8.* HAMILTON of WISHAW *against* FORBES, Sheriff-Depute of Aberdeen.

THE Sheriff-depute, being charged to make payment of the taxation of that shire, imposed *in anno* 1665, did SUSPEND, upon that reason;—That, by the Act of Convention, the Sheriff-principal, deputies, or their clerks, are empowered to collect. But so it is, that the Earl of Marshall, being Sheriff-principal before the suspender was admitted his depute, had appointed Mr James Kennedie, his Sheriff-clerk, collector; who accordingly had collected, and made payment, for two years together, before the suspender's admission, who had continued in office during the whole terms of the taxation; whereas the suspender was only in place the last terms of the taxation.

It was ANSWERED, That the Act of Convention, appointing the Sheriff-deputes, as well as the principal and clerks, to be collectors, they are liable to the king, in case any of them malverse. But so it is, that Kennedie, the Sheriff-clerk, had uplifted, and now become bankrupt; for which the suspender is liable, seeing he ought to have looked to his sufficiency; and all he can crave is to get a warrant to seek his relief.

The Lords did sustain the reason of suspension, and found, That, not only for the bygone terms before the Sheriff-depute's admission, but even for the subsequent terms, he could not be liable,—the clerk being appointed collector, whom he could not hinder, and who was approven by the general collector, and got payment from him; but if that term's taxation was not at all uplifted, they found the suspender liable to collect and count, the Sheriff-principal and clerk being now dead.

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1674. *January 9.* HALBERT GLADSTANES *against* JOHN EDGAR of WEDDERLY.

In a suspension and reduction of a bond of corroboration, whereupon the said John Edgar was charged for payment of the sum of £800, upon the reason of minority and lesion, in so far as, in the bond of corroboration, the whole annu-

alrent and penalty of his father's bond were added to the principal sum, and made to bear annualrent thereafter :

It was ANSWERED, That the adding of the bygone annualrents to the principal sum, was most just, seeing they were then all due ; and if a minor might have borrowed money to pay the same, upon a bond bearing annualrent, so it was lawful to add the same to the principal sum, and take bond for altogether bearing annualrent. And as to the penalty, seeing the expense of recovering a decreet did amount to as much, it was just, likewise, to add the same to the principal sum and annualrents.

The Lords did find the answer to the first reason relevant, and assoilyied from the reduction, in so far as the annualrent was made principal, bearing annualrent, and that it did not fall within minority and lesion : but, as to the second, in making the penalty a principal sum, they did ordain the charger to give in a particular account of his necessary expenses, and declared, that if they found reason, they would modify the same, and reduce *pro tanto*.

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1674. January 14. MARGARET JOHNSTON *against* ROBERT STEWART.

MARGARET Johnston, as executrix to her father, who was minister at Orphar, did pursue the said Robert for the vicarage of the lands, lying within the parish of Orphar, in Orkney, extending to two hundred merks yearly, for the space of seven years, during her father's service ; he being presented to the vicarage of the parish ; and thereupon had obtained decreet and letters conform.

It was ALLEGED for him, That the presentation, and letters conform, could give him no title to the vicarage, unless it were instructed that it was a distinct benefice belonging to the patron, or that they could prove that the pursuer's father, or other incumbents before him, had *decennalis et triennalis possessio* of the vicarage teinds of the parish ; which they were content to find relevant.

It was REPLIED, That the minister's presentation being from the presbytery, who then were in use to present in place of a laick patron, having obtained letters conform, gave him a sufficient title ; unless the defender would allege that they had right themselves to the teinds, or have been in possession by virtue of a tack, or other rights, flowing from those who had right to the vicarage : and if none can allege upon any right, all vicarages belong to the kirk *jure ecclesiastico*.

The Lords did repel the defence, and sustained the minister's title, as being founded *in jure*, against the defender, who had no right, nor could allege that he was troubled at the instance of any other person who pretended right to the vicarage ; and found, that vicarages as well as parsonages did, *in jure*, belong to the church, and those who are presented thereto, unless the patron or others can allege upon a valid right settled in their person.

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1674. January 14. The EARL of DUNFERMLINE *against* The EARL of CALLENDER.

IN a pursuit at Dunfermline's instance, as assignee constituted by his father,