

1706. *February 15.* WILLIAM CARSTAIRS *against* VANSE of BARNBARROW.

MR William Carstairs, Principal of the College of Edinburgh, against Captain Vanse of Barnbarrow. Mr Carstairs, as one of the Queen's chaplains, having a gift of the emoluments of the chapel-royal, pursues Mr Vanse for his teind-duties, payable to the prebendaries of the chapel, conform to an old tack liquidating it to £453 Scots yearly.

ALLEGED,—His predecessor has another tack obliging him to pay £400 to two ministers, and only £53 or eighty merks to the prebendary; so he can be charged by Mr Carstairs, as come in the prebendary's room, but only for eighty merks; but if he will relieve him of the two ministers' stipends, then he'll pay him the haille quota of £453. And that this tack was ratified by the commission in 1618, and a prorogation for 100 years then given him.

ANSWERED,—He was not concerned in that tack; which, as it was null, being set without the Bishop of Galloway's consent, so it never took effect, but only the other tack; conform to which, the dean of the chapel-royal has been in possession of the haille £453 these forty years bygone, though a kirkman needs no more than thirteen years; conform to the rule of the chancery of Rome,—*Triennalis et decennalis possessor non tenetur docere de titulo.*

REPLIED,—That whatever favour kirkmen pretend to, yet Mr Carstairs does no service for this gift. And possession only infers a presumptive right, which can never be obtruded against plain positive titles, as are here produced; and that they were not sooner founded on, is because he has recovered them lately out of his tutors' hands; and it were a jest for John Doull, the agent, who has acquired the right to be archpriest of the collegiate kirk of Dunbar, and any lay lord of erection, to plead possession for a sufficient title, which was only introduced in favour of kirkmen. See Dirleton, *tit.* Backtacks and Prorogations; and Durie, *18th June 1629, Dunbar.*

The Lords repelled the defence, and preferred Mr Carstairs, in respect of the bygone immemorial possession; and though seven years may introduce a possessory judgment in teinds as well as in lands, yet here, there being a preferable right, prescription was required to take it away; and that Captain Vanse could not prove that the tack he founded on had been clad with possession, and so taken effect, within these forty years bygone. *Vol. II. Page 328.*

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1706. *February 21.* SIR JAMES DICK of PRESTONFIELD *against* JOHN SKAILLS and MUNGO COCHRAN.

SIR James sets a tack of the house and parks of Cameron, to the said Skails, for twenty-one years, for erecting a starch-manufactory there, paying £360 of tack-duty, with this irritancy,—That if the tack-duty were not punctually paid each year, the tack should be void and expire. Skails turning bankrupt, Sir James raises a declarator of the irritancy and nullity of the tack; in which Cochran compears to defend; and Sir James objecting, that he had no interest, in re-