

Chapter; likeas the LORDS declared, that if all the Chapter were minors, that there was no necessity of any of their consents.

No 18.

1623. *June 24.*—IN an action of reduction pursued at L. Drumlanrig's instance, against Maxwell of Hills, for reduction of a tack set to Maxwell of Hills, which was clad with long preceding possession, because it wanted the consent of the most part of the Convent of the College Kirk of Lincluden, to the provostry and benefice whereof the teinds contained in that tack belonged; the Convent, consisting of eight persons, by the Provost, and the tack being only subscribed by the Provost and three of the convent;—the LORDS found it proven sufficiently that the Chapter consisted of eight persons by the Provost, by production of the provisions given to eight several prebendaries of their prebendaries by the Provost, and by production of some feus and rights set by the Provost, which were consented to by the said eight prebendaries, which they found sufficient probation to verify, that the Chapter consisted of eight persons by the Provost, and therefore that the subscription of the most part was necessary with the Provost to that tack controverted; and found it not necessary to show by the foundation, that the Chapter consisted of eight persons; albeit the defender *alleged*, That there was no necessity to him to have the consent of the most part of eight, except the foundation clearly determined that chapter to consist of that number, for the subscriptions of the prebendaries to some person's particular rights, as consenters, and the provisions to the prebendaries was *alleged* by the defender to be no concluding argument to infer necessarily, that the Chapter was made up of that number, and that thereby he had a necessity to have the subscriptions of the most part of that number to his tack, which was clad with so long possession, and never impugned before, except it were so constant and certain by the foundation of the benefice; which allegiance was repelled by the LORDS.

Act. *Hope & Nicolson.* Alt. *Peebles, Stuart & Cunninghame.* Clerk, *Gibson.*

Durie, p. 21. & 65.

1624. *November 9.* HOPE against the MINISTER of Craighall.

IN an action betwixt Mr Thomas Hope and the Minister of Craighall, of double poinding, for the teinds of certain lands of the barony of Craighall; the LORDS found, that a tack set by the minister of Ceres of the teinds controverted, which teinds pertained to him as a part of his benefice of the parsonage of Ceres, needed not to have the consent of the Bishop of St Andrew's, and of the rest of the chapter of St Andrews, of the which chapter the parson of Ceres, who is come in the place of the Provost of Kirkhill, one of the said chapter, constituted by the second act of Parliament *anno 1617*, is now one of

No 19.

A tack let by an inferior beneficed person, for longer term than his life and five years, found not null.

No 19.

the said chapter ; upon the which act, the Minister, party in this process, and who succeeded to the minister, setter of the tack, proponed this argument of nullity ; that seeing the setter thereof, and his successors, are by that act appointed to be of the chapter of St Andrew's, as his consent with the rest of the chapter is necessary to the deeds done by the Bishop, by the same reason the Bishop's consent with the rest of his chapter is necessary to the deeds done by any of the rest of the chapter in their proper patrimony. Which allegiance was repelled by the LORDS, and the Bishop's consent, nor any of the rest of the chapter, was no ways found necessary to any deed done by any person, who was made one of the chapter of St Andrew's, in the things which belonged properly to that parson's patrimony ; seeing it might be, that some of the chapter might possess a benefice belonging to the presentation of a laic patron, and so no consent would be requisite in that case, but of his own patron ; and as the benefice might be at the presentation of a laic patron, or some other, and that the same was not of the patrimony of the bishoprick, so it might also have its own proper chapter, as some of the members of that chapter appointed by that act indeed hath, whereby the consent of their own chapter, and no other is required. And the LORDS found, that seeing that act of Parliament appointed only a special chapter, whose consent was declared by the act, to be necessary to all deeds to be done by the Bishop, that the said act could receive no extension to infer thereby the like necessity, to deeds done by any member of the chapter, especially where the consent was not necessary, to the deeds done by that member, before that act.

In this process also, the LORDS found, that a tack set by an inferior beneficed person, for longer space than their lifetimes, and five years thereafter, was not null, notwithstanding of the fourth act of the Parliament *anno 1617*, which determinates that space to such tacks, in respect that act prohibits not tacks to be set for any longer space ; which if it did simply, without any adjection of a penalty to the same, might then infer the nullity thereof ; but seeing the act hath thereto adjected a special punishment against the setters, who set for any longer space than is therein permitted, the punishment might thereby be incurred by the contravener, but the tack would not fall as null, no nullity being set down in the act against the same, especially also seeing the tack is registrated in the registers of Session, conform to the ordinance of that act, in due time ; which registration was sustained, being made in the books of Session, seeing there was then no other depute appointed by the Clerk of Register for that effect, as that act imports.

Vide 26th March 1629, College of Aberdeen contra Menzies, No 20. infra ; where the contrary would seem to be done, except that here the Provost was in use to set tacks alone, without consent of the Bishop or his Chapter, which was not here alleged.

No 19.

1624. *November 16.*—IN the above mentioned action of Mr Thomas Hope, whereof mention is made 9th November 1624, the LORDS found a procuratory of resignation subscribed by the Provost and his prebendars, of a part of his benefice, which prebendars dwelt in diverse parts of the country, so that their subscriptions could not be had at one time, and, therefore, the procuratory behoved to be of diverse dates, as the same was subscribed by the prebendars, albeit the instrument of demission, following the said procuratory, was of a date anterior to some of the dates of the procuratory, viz. before the time that some of the prebendars subscribed the same, yet that the procuratory and demission foresaid was sufficient, seeing it is the frequent custom to take consent of prebendars, or of chapter, or convent, at any time, to deeds done by the prelate, and after the date of the principal's subscription; albeit it might appear, that seeing the prebendar's consent was necessary to the procuratory, without which it could not be a perfect act, therefore, while the same was made perfect by all the subscriptions necessary, the instrument of demission, which could not be valid without warrant of the procuratory preceding, ought to have been made after the procuratory was a compleat and perfect evident, which could not be, until it was subscribed by all the prebendars requisite thereto. *Vide 23d January 1624, M'Moran against Black, voce WRIT.*

Act. Hope.

Alt. Stuart & Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 529. Durie, p. 144, & 147.

1629. *March 26.* COLLEGE of Aberdeen *against* MENZIES.

THE College of Aberdeen having the deanry of the cathedral kirk of Aberdeen annexed and mortified to them, pursue reduction of certain tacks of lands pertaining to the deanry, set by the said college, because the same was not with consent of the Bishop and remanent members of the said cathedral church; and the defender *alleging*, that there was no necessity of any of the of the chapter's consent, seeing the deanry was mortified to the College, to whom the rents and fruits of the deanry did belong, and whose consent he had, and which was set by them; the LORDS found the tack null, wanting the consent of the chapter; for albeit the deanry, and fruits, and rents thereof, were mortified to the College, yet the dignity was not thereby extinct, for thereby the College came in place of the dean, and as deeds done by the dean, before the mortification, required the consent of the rest of the chapter, so the deeds done by the College required the like solemnity, they being only become in the dean's place.

Act. Nicolson.

Alt. Cheap.

Clerk, Scot.

Fol. Dic. v. 1. p. 527. Durie, p. 443.

No 20.

The consent of the chapter found necessary to give effect to a tack.