

1662. *June 24.* MR. ALEXANDER VERNOR *against* GEORGE ALLAN.

**No. 8.**

A merchant having bought a crop, before the teind was drawn, was found liable for the stipend, though he had paid to the seller the full price.

Mr. Alexander Vernor, as executor to Mr. David Calderwood, charges George Allan to pay a part of the defunct's stipend, as he who intromitted with the teinds of the lands liable therefor, whereupon he had obtained decret. The suspender alleged, That the decret was in absence; and any intromission he had was only as a merchant, having bought from Sir Alexander Auchmutty, the heritor, to whom he made payment *bona fide*, before any arrestment or pursuit against him. The charger answered, *Non relevat*, because the suspender is obliged to know that, by law, the teinds are liable for the minister's stipend; *2dly*, He offers him to prove, that the suspender did not make his bargain for so many bolls of victual; but that he took disposition of the corns *ipsa corpora*, before they were drawn.

The Lords found the answer relevant to elide the reason, and found the defender liable for the tenth part of the corns he bought.

*Fol. Dic. v. 2. p. 394. Stair, v. 1. p. 112.*

1663. *June 24.* MENZIES *against* LAIRD GLENURCHY.

**No. 9.**

Stipend found not to burden an heritor, where there is a life-renter living.

The daughters of Mr. William Menzies, as executrixes to him, pursue Glenurchy for payment of a bond due to their father, he alleged minority and lesion, and that he had reduction thereupon depending. The pursuer answered, No lesion, because this bond being granted to their father, for his stipend, by the defender, who was heritor of the land, he was not lesed, because, as heritor, he was liable for the stipend. The defender answered, That his being heritor could not oblige him, because his grandfather was then living, whose life-rent was reserved in his disposition; who, and the intromitters, could only be liable, stipends not being *debita fundi*; and it were of very evil consequence, if the heritor were liable, during the whole life of a life-renter.

The Lords found, That there being a life-renter, the heritor was not liable, and therefore sustained the reason.

*Fol. Dic. v. 2. p. 394. Stair, v. 1. p. 193.*

**No. 10.**

A stipend found to affect the whole teinds unbought, where there was no locality.

1664. *December 8.* MR. JAMES HUTCHESON *against* EARL of CASSILLIS.

Mr. James Hutcheson having charged the Earl of Cassillis for his stipend, the Earl suspends, and alleges, *first*, That the charger had no right to the Whitsunday term, 1663, because that term was past before his presentation, at least before his institution and collation; *2dly*, There being but a decret of modifica-

tion, and no locality, the Earl alleged locality should be first made, and he liable but for his proportional part of the stipend. No. 10.

The Lords found, That the stipend affected the teinds, and the Minister might take himself to any of the heritors, in so far as he had teind; and therefore sustained the condescence, and ordained the charger to prove what teind my Lord had, without prejudice to him to crave his relief.

*Fol. Dic. v. 2. p. 393. Stair, v. 1. p. 235.*

\* \* \* Newbyth reports this case :

Mr. James Hutcheson, Minister at Inch, having charged the Earl of Cassillis for payment making to him of 500 merks, and 3 chalders of victual, for his stipend 1663, conform to his decret of modification, he suspends, upon this reason, That he being but one of the heritors within the parish, and there being more heritors than him contained within the decret of modification, so that, until there were a locality produced, whereby every one's proportion might be known, the Earl could not be charged for the whole : The Lords found the Minister might charge any of the heritors for payment of his stipend; albeit he had no decret of locality, especially the Earl of Cassillis, since he offered to prove, that he had more teinds in the parish than would satisfy the modified stipend, and that the Earl might seek his relief against the rest of the heritors.

*Newbyth MS. p. 8.*

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1676. February 8. COLLEGE OF ABERDEEN against \_\_\_\_\_.

No. 11.

The College of Aberdeen, having right, by act of Parliament, to the vacant stipends within the bounds therein mentioned, pursues for a vacant stipend. The Bishop of Ross compeared, and alleged, That the kirk was his mensal kirk, so that there could be no vacant stipend.

The Lords found, That the College should have right to any stipend that belonged to the former Ministers, either modified to them, or of which they had been in possession; and that it was consistent, that the kirk should be mensal, and yet the Minister should have a stipend, and that the pursuers should have right thereto, being vacant.

Reporter, *Craigie.*

*Dirleton, No. 325. p. 157.*

\* \* \* Gosford reports this case :

The collector pursuing the heritors for the vacant stipends since the death of the Minister, it was alleged, That, by the act of Parliament, he had no right, because the said kirk was a mensal kirk of the bishopric of Ross, and so belonged