

1780. July 14. HAY and LOW *against* WILLIAMSON.

Certain heritors of a parish pursued the Minister for repetition of the money for communion-elements for 12 years, during all which time he had omitted to administer the holy sacrament. Urged in defence, The money for communion-elements is to be considered as a part of a Minister's stipend, of which he cannot be deprived, unless he is previously deposed from his function by the proper ecclesiastical court. The Lords found no claim of repetition competent.

*Fol. Dic. v. 4. p. 301.*

\* \* This case is No. 4. p. 2492. *voce* COMMUNION-ELEMENTS.

1786. December 23.

MR. WILLIAM MITCHELL, Minister of Tingwall, in Zetland, *against* The HERITORS of that Parish.

The stipend of the parish of Tingwall received an augmentation in 1722. In 1786, however, Mr. Mitchell, the Minister, having brought against the heritors a new process of augmentation, the defenders

Pleaded: The Court have no power to grant a new augmentation of any stipend which has already been augmented since the passing of the act of Parliament of 1707, Cap. 9. from which they derive their authority.

By that statute a commission was conferred on the Lords of Session, investing them with the same powers that by the statutes of 1633, C. 19. 1690, C. 23, 30. and 1693, C. 24. had been entrusted to former commissioners of teinds. With respect to the stipends of Ministers, the power committed was, "to appoint constant and local stipends;" which plainly implies, that the appointment was single, and not to be repeated. For this being once made, and the object of the commission so far accomplished, its powers must cease of course; and nothing but a renewal of it can authorise a second appointment, or a new augmentation of stipend. If, in the progress of time, either the lowering of the value of money, or any other circumstances, give occasion for an addition to the livings of the Clergy, it will belong to the Legislature to grant a new commission, with correspondent authority. The present demand from the Court is unprecedented, as well as illegal. For in a few instances, in which there is the appearance of a second augmentation having been granted, it will be found, that the first had been brought about by collusion, and as such was entitled to no regard.

Answered: Prior to 1633, they were mere temporary expedients that were adopted for the provision of the Reformed Clergy. Afterwards the change introduced into the state of teinds by the decreets-arbitral of King Charles I. rendered it necessary to invest the commissioners with enlarged powers. Teinds were de-

No. 29.

No. 30.

A Minister's stipend augmented posterior to the Union, not to receive an after augmentation.

Reversed on appeal.

No. 30. clared to be subject to the perpetual burden of the “ Ministers stipends already granted, and of such augmentation of stipend as should be found just and expedient; Act 1690. C. 23. In conformity to this rule, the jurisdiction of the Court must now stand under the authority of the statute of 1707, as comprehending *inter alia*, the enactment last quoted. It is a Court of permanent institution, and it would be absurd to suppose, that its power to allot “ such a stipend as should be found just,” upon a due consideration of circumstances at the time, ought to be precluded on account of an allotment made, however justly, at a former period, and in circumstances widely different. In fact, the Court has frequently exercised such a power, as, for example, in the cases of Kinnettes in 1767, of Lochbroom in 1769, Pennycuick in 1774, Kettle in 1774, and St. Andrew’s and Deerness in 1776, (not reported.) Nor is it a sufficient objection, that the preceding augmentations may have been settled through collusion; for that circumstance does not seem to affect the jurisdiction of the Court. And in the case of Kirkden, the House of Lords, No. 28. p. 14816. appeared to give their sanction to the same interpretation of the powers of the Court.

The Court appointed a hearing in presence, after which memorials were ordered. On advising these,

“ The Lords dismissed the process, and assolizied the defenders.”

To this judgment the Court adhered, after advising a reclaiming petition and answers.

Act. *Dean of Faculty et Procurator for the Church.* Alt. *G. Fergusson et C. Hay.*

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*Fol. Dic. v. 4. p. 300. Fac. Coll. No. 299. p. 462.*

\* \* This case having been appealed, the judgment was reversed, and the cause remitted, in order that the parties might be re-heard.

1788, July 16.

The OFFICERS of STATE *against* JAMES CHRISTIE.

No. 31.

Those Bishop’s tithes are alone exempted from the burden of augmentations, which belonged to that rank of the clergy at the Reformation.

THE teinds in the parish of Scoonie belonged to the Priory of St Andrew’s, which, after the Reformation, was erected into a temporal lordship, in favour of the Duke of Lennox.

In 1629, the teinds of the lands of Durie, a considerable estate in this parish, were purchased from the Duke of Lennox by Sir Alexander Gibson; and in 1635 the remaining tithes were purchased by Charles I. and appropriated to the See of St Andrew’s.

Afterwards, the Minister of the parish obtained an augmentation, and having insisted in an action for localling the additional stipend, it was found, that James Christie, as standing in the place of Sir Alexander Gibson, had an heritable right to the teinds of the lands of Durie. But it was nevertheless contended on the