

## COMMUNION ELEMENTS.

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1678. November 29. BIRNIE *against* EARL of NITHSDALE and his Tenants.

**T**HE kirk of Carlaverock having a decreet of modification of locality of three chalders of victual, 360 merks of money, 40 merks for the communion elements, with the vicarage used and wont; the minister having been long in use of payment of L. 100 each chalder, chargeth for that price; there is a bill of suspension given in for the parishioners, and the cause ordained to be discust upon the bill; the suspenders do insist on these reasons, *imo*, That the decreet of locality bears, three chalders of victual without liquidation of the price, and albeit the charger hath been in use of L. 100 the chalder, yet that can oblige no longer than both parties continue voluntarily to give and accept that rent, and now the victual having been offered, being *ipsa corpora*, it is sufficient. The charger *answered*, That the liquidation being more than thirteen years, doth import a constant settlement, and that he demanded no more when the victual was at the dearest; and, as to the crop 1677 now charged for, there was no offer made till April 1678. THE LORDS found the offer not made *debito tempore*, and that the use of payment did stand for that year, not being interrupted by an offer in due time. The suspenders further *alleged*, That the charger claims the vicarage, and yet under the vicarage he claims the teind-sheaves of some lands in the parish, and a yearly duty for the salt that was used to be made in other parts of the parish, and for the teind of lint and hemp in other parts; and for a duty from the weavers for each loom in the parish, all which are unwarrantable, and cannot be comprehended under the vicarage. The charger *answered*, That vicarage teind is local and consuetudinary, and in many places a part of the teind-sheaves was the vicar's pension, and in other places *decimæ industriales* were a part of the vicarage; and teind-eggs, and teind-fruit, and teind-herbs; and in this case, the minister being in possession of a small liquidate duty for salt, and the profit by weaving, and of the teind-sheaves of one room, and the teind of lint and hemp of some others, it is enough for him to say, that he is *decennalis et triennalis* possessor; but if need be, he offers to prove, that he and his predecessors have been in immemorial possession, or in 40 years possession of the particulars aforesaid. THE LORDS found 40 years possession relevant, but would not sustain 13 years possession of such particulars as were not ordinarily comprehended in vicarage. The suspenders did also *allege*, That

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A minister charging for 40 merks for communion elements, the Lords found the sum due, though he had not given the communion; but ordained it to be put in the poor's box, according to an offer made by the charger.

No 1.

the minister could not have the 40 merks for the communion elements, because he had not given the communion. The charger *answered*, That it was *jus tertii*, and that he was willing that the sum charged for the elements should be put in the parish box.

THE LORDS found the letters orderly proceeded, and ordained the same should be put in the parish box according to the charger's offer. See TEINDS.

*Fol. Dic. v. 1. p. 155. Stair, v. 2. p. 649.*

\* \* \* Fountainhall reports the same case :

THE LORDS decerned for the communion elements, though he had not given it; but the minister offered to put it in the poor's box: As also decerned for some teind-sheaves, since that was the vicar's modification where grass rouns are turned to cash. *Item*, they decerned for 2s. 6d. *per annum*, furth of every weaver's loom; and for the salt, though these were *decimæ industriales*; in respect of 40 years possession, which at least is required where teinds are only due locally, and *per consuetudinem*; but, in the usual teindable species, such as lamb-wool, &c. *triennalis et decennalis possessio* is sufficient; which difference is observable.

*Fountainhall, MS.*

1713. July 21.

The HERITORS of the Parish of Abdie *against* MR JOHN CORSAN minister there.

No 2.  
Found, that the yearly modification for the communion elements cannot, when the sacrament is not administered, be diverted to the benefit of the minister, but ought to be applied to the poor's use.

MR JOHN CORSAN having ten bolls of victual yearly, modified in his decret of locality, for defraying the expense of the communion elements; the heritors of his parish pursued him for repetition of these modified bolls, as *indebite* paid to him, for all years wherein the sacrament was not administered by him, to the end the same might be given to the poor, or applied to other pious uses within the parish. Because the act 54th Parl. 3d, James VI. ordaining persons (i. e. the parishioners), of all parish kirks to furnish bread and wine to the communion, how oft the same shall be ministered there, implies, That they are liable to that charge only when the sacrament is ministered: And those who are of opinion, that the heritors are liable yearly, hold, that the sum modified, when the sacrament is not administered, should be given to the poor, and not to the minister, Mackenzie's Obs. on the said act, Forbes' Treatise of Church Lands and Tithes, p. 428, and a minister obtained decret for payment of the sum modified for communion elements, upon his offer to put it in the poor's box, November 29th 1678, Birnie *against* the Earl of Nithsdale, (No 1. p. 2489.): Which offer was made, because he knew the Lords would oblige him to it.