

No 30. mined upon the former grounds, the LORDS did not dip upon this. By the canon law, if a patron fall poor, he is to be alimeted out of the benefice which he or his predecessor founded or enriched, on this presumption, that the donation was with that implied quality.

Fol. Dic. v. 2. p. 48. Fountainhall, v. 2. p. 35.

1700. June 20. LORD SALTON against LADY PITSLIGO.

No 31.
The stipend
must be ap-
plied to pious
uses within
the parish.

THE Lord Salton, being patron of the kirk of Tyrie, procures an act of Privy Council, allotting 1000 merks of the vacant stipends thereof, for repairing the adjacent harbour of Frazerburgh; and the Lady Pitsligo, both for her own liferent, and as curator to her son, being debtor in 500 merks of it, she makes a discharge of the stipend, and grants bond for that sum to George Cheyne shore-master there; but being afterwards charged on her bond, the Lady suspends, that she was likewise distressed at the instance of the Moderator of the presbytery, who craved the said stipend might be applied to sundry pious uses within the parish, which they condecended on, as the repairing the church and manse that were ruinous, the building a bridge, and the maintaining the poor, conform to the destination of the act of Parliament 1685. *Answered*, Whatever might be pleaded if the thing were intire, yet here the nature of the debt was wholly innovate by making a discharge of the stipend and granting a bond for it; so it was extinct as to the nature and quality of a stipend, and on the faith of it that sum, and more, was actually expended on the harbour, which, though not within the parish, was adjacent thereto, and very beneficial to them; so it being *bona fide* employed before quarrelling, *res non est amplius integra*, but the Lady must pay. *Replied*, It was not denied but the bond was given for the stipend, and so being surrogate *in ejus locum sapit naturam surrogati*, and must be liable to its burdens; and *esto* the sum equivalent had been expended on the harbour, yet *non refert*, seeing the bond is yet unuplifted, and so, as extant, may be affected by the presbytery, and claimed for the pious uses within the parish, which neither the patron nor any act of Privy Council can invert to any other use without the parish, though never so necessary; seeing this were to dispense with the act of Parliament's specific destination; and the being employed or not does not alter the case; and has been oft so found by the LORDS, as in the competition for the vacant stipend of the kirk of Foveran, betwixt the heritors of the College of Aberdeen, who had the Privy Council's gift; and the like was determined as to the stipend of Falkirk. Some of the LORDS thought this a material specialty here, that, on the faith of this bond, they had expended the sum; but the plurality preferred the presbytery and parish to the harbour, and found it behoved to be applied to pious uses within the parish in the first place.

Fol. Dic. v. 2. p. 48. Fountainhall, v. 2. p. 97.