

1780. July 14. HUGH HAY and DAVID LOW against ANDREW WILLIAMSON.

No 4.
Action of repetition of the allowance for communion elements against a minister, who, for twelve years, had failed to dispense the sacrament, was refused.

MESSRS HAY and Low were heritors of a parish, of which Mr Williamson was minister. The latter having failed to administer the sacrament of the Lord's Supper for twelve years, at different parts of the period of his incumbency, the former brought an action against him, concluding for repetition of the amount of the communion element money for those years, in order that it might be applied to pious uses.

Pleaded for the defender; The payment of communion element money is not to be considered as separate or distinct from the rest of a minister's stipend. The one agrees with the other in every particular. Both are paid out of the tithes, are secured by decree of the commissioners for plantation of kirks and valuation of teinds, are payable at the same terms, and a suspension of a charge given for either can only be passed on payment or consignment of the sums charged for. Both together constitute the legal allowance to a minister for the performance of his ecclesiastical duties; but as of this performance his ecclesiastical superiors only may take cognisance, so he is not amenable for it to any civil court. Those superiors alone can depose him from his ministry; and until deposition take place, for suspension merely is not sufficient, being *ab officio*, and not *a beneficio*, (Ker *contra* Parishioners of Cardine, No 2. p. 461.), he is entitled to receive the whole legal emoluments annexed to that spiritual office. It is true, that formerly the burden of providing communion elements was laid on titulars of tithes, who were bound to furnish them as often as they became necessary; but now, in consequence of a particular sum being modified by the court of teinds, and bestowed on ministers, they are the only persons obliged to bear this burden whenever it shall occur, and titulars are for ever relieved from that expense. In this manner, the sum thus allotted, along with the rest of the stipend, becomes properly a part of that legal allowance; and therefore, if the Court of Session cannot deprive a minister of his sacred function, neither can it strip him of this, more than any other part of his benefice.

Answered; The payment of a minister's allowance for communion elements does not correspond to his stipend, as has been argued. It is different with respect to the ann, and to the application of vacant stipends, that allowance falling under neither. As it is appropriated for one particular purpose, which implies the condition of its future application accordingly; so if this condition fail, and the sum be misapplied, a civil action, *condictio causa data, causa non secuta*, will arise; which surely must come within the jurisdiction of this court. Ecclesiastical censure is out of the question; insomuch that were it to take effect, the present action for repetition would still be not the less necessary; for the spiritual court could not decern for such repetition. Accordingly, in similar cases, action has been sustained, to the effect of having the money applied for

pious uses; July 21st 1713, Heritors of Abdie *contra* Corsan, No 2. p. 2490.; June 10th 1742, Heritors of Strathmiglo *contra* Gillespie, No 3. p. 2491.

No 4.

Observed on the Bench; Were a minister to dispense the sacrament as often as once every month; no additional claim would accrue to him for communion element money. On the other hand, though he should not celebrate that ordinance so frequently as once a-year, no deduction on that account from his stated allowance could be required of him.

The Court, however, seemed to view this matter in a different light from that of a refusal to pay communion element money to a minister, who had failed to employ it for that sacred purpose; in which case it appeared that the minister would not have been found entitled to demand it.

' THE LORDS assoilzied the defender.'

Act. *D. Grame.*Alt. *Robertson.*Clerk, *Campbell.*

S.

Fac. Col. No 116. p. 215.

1793. - February 13.

DAVID WILKIE, *against* The HERITORS of the Parish of Cult.

In a process of augmentation brought by Mr Wilkie, minister of the parish of Cult, the Court awarded to him, by way of stipend, ' the whole teinds, parsonage and vicarage, including therein L. 40 Scots for furnishing the communion elements.'

No 5.
The Court cannot award an allowance for communion elements out of the stock.

The pursuer presented a petition, praying that the sum allowed for communion-elements should be increased. The petition was refused, without answers.

A second petition was offered for the same purpose, in which two cases were stated where the Court, after the teinds were exhausted, had burdened the heritors with a sum for communion elements, payable out of the stock. In answer to this petition, the heritors

Pleaded, The teinds alone are burdened with the expense attending the administration of the sacrament; and indeed the commission of teinds has no authority to pronounce any decree which cannot be made effectual from them; 1572, c. 52.; 1592, c. 123. 166.; 1606, c. 2.; 1617, c. 3.; 1621, c. 5.; 1633, c. 8. 19.; 1661, c. 61.; 1663, c. 28.; 1672, c. 15.; 1686, c. 22.; 1690, c. 30.; 1693, c. 23.; 1707, c. 9.; Stair, b. 4. tit. 1. § 58.; Bankt. b. 2. tit. 8. § 165, 166.; Erskine, b. 1. tit. 5. § 23.; 25th November 1778, Heritors of Glenbucket; * 17th June 1772, Robertson *against* Lady Frances Erskine, *voce* TEINDS.

Observed on the Bench; This Court has no jurisdiction over the stock.

The petition was unanimously refused.

Act. *Wm Robertson.*Alt. *R. Craigie.**Fac. Col. No 28. p. 57.*

See STIPEND.—See TEINDS.—See APPENDIX.

* Not reported.