

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

part of the Officers of State, that the teinds of Durie ought still to be allocated, because the whole remaining tithes had belonged to the Archbishop of St Andrew's, and this agreeably to the determination of the Court in the cases of Lochnell, No. 22. p. 14796. and Arngask, No. 24. p. 14808.

Pleaded for Mr. Christie : It is not from any general privilege attending Bishops' tithes, that they have been found in some cases to be exempted from the burden of additional stipends ; but in consequence of the proceedings in 1629, on occasion of the general submission to Charles I. when a particular exemption was made with regard to tithes then possessed by Bishops. It would indeed be extremely unjust, if, in consequence merely of tithes having been at any after time appropriated to a Bishop, the proprietors of the other tithes should be exposed to any loss. And it is of no importance, that the act 1693 declares in general terms, that the commissioners shall have no power "to order the buying or selling of such teinds as had formerly belonged to the Bishops, and now belonged to their Majesties, by the abolition of Prelacy, and that as long as the said teinds shall remain in their Majesties' hands undisposed." This part of the enactment was solely intended to remedy a defect in the prior act of 1690, by putting teinds of the description therein mentioned, with regard to the landholder's right of purchasing, on the same footing as they had formerly been, when the decret. arbitral pronounced by Charles I. was the rule in all questions of this sort ; 9th February, 1734, Don of Newton *against* Kerr of Littledean. (Not reported ; see APPENDIX.)

Answered : It is a mistake to suppose, that the exemption with regard to Bishops' teinds arose entirely from the proceedings held in the reign of Charles I. The reason of it evidently was, the peculiar favour due to Bishops as a superior order of Ministers ; and the inequality supposed to arise from it is altogether imaginary. For why should the purchasers of tithes after the Reformation, be in a better situation in this respect than those who had acquired the tithes of their lands at an earlier period ? The enactment of 1693, however, seems to put this matter beyond dispute ; all tithes that had ever belonged to Bishops being, without distinction, put in the same situation. As to the decision quoted on the other side, it is not, when properly considered, of any authority in the present argument, the tithes there having been sold to the King, "with the burden of the Ministers' stipends ;" which precluded any determination of the general point.

A scheme of locality having been prepared, in which no part of the augmented stipend was laid on the lands belonging to Mr Christie, it was approved of by the Lord Ordinary.

A reclaiming petition was afterwards preferred by the Officers of State, which was followed with answers and replies.

"The Lords affirmed the judgment of the Lord Ordinary."

Lord Ordinary, *Ankerville.*

Act. *Solicitor of Tithes.*

Alt. *Rolland.*

Fol. Dic. v. 4. p. 301. Fac. Coll. No. 36. p. 59.