

‘ in feu or tacks, or put any in possession of the same, in prejudice of their successors, but the samen to remain always free, to the use and easement of sick as shall be admitted to serve and minister at the said kirk.’ As to the enactment of 1587, which obliges all incumbents to find security that they shall not enter into any agreement by which the value of the living might be lessened, it cannot be supposed to extend their powers in such a manner as to defeat the object which the Legislature had in view.

No 36.

The question having been reported on informations, the Court in general were of opinion, that a minister could not, in any case, grant feus of his glebe.

THE LORDS therefore ‘ sustained the reasons of suspension, and suspended the letters *simpliciter*.’

A reclaiming petition was preferred, but it was refused without answers.

Reporter, Lord Dunsinnan Act. Robertson, Procurator for the Church. Alt. Lord Advocate.
Clerk, Home.

C.

Fol. Dic. v. 3. p. 251. Fac. Col. No 179. p. 362.

1793. February 8.

The MINISTER of the Parish of Falkland, against DAVID JOHNSTON and Others.

No 37.

IN the year 1650, a contract was made between the minister of Falkland and the titular of that parish, whereby the former, with consent of the presbytery, gave up his manse and glebe, and in lieu thereof accepted of the annual payment of a chalder of bear out of the teinds.

A minister deprived of his manse and glebe, by a contract, which had been entered into with a former incumbent, saved from reduction by prescription, was nevertheless found entitled to a new designation.

Mr Brown, the present incumbent, brought a reduction of this transaction against the present possessor of the glebe; but, he having founded his defence on a prescriptive title sufficient to exclude, was assoilzied.

Upon this the minister applied to the presbytery, to design him a new manse and glebe, which they did accordingly; and he then renounced all claim to the chalder of bear.

The sentence of the presbytery was brought under review by some of the heritors, who

Pleaded, The contract 1650, until it be legally set aside, is binding upon Mr Brown and all future incumbents. The presbytery have no right to judge of its validity, which, however, they have virtually done, by their proceedings in this case.

2dly, The present possessor of the old glebe has acquired a prescriptive right to it. The heritors ought not to suffer from the negligence of the ministers, in delaying so long to challenge the contract. The pursuer therefore cannot claim a new designation; Edgar, 10th June 1724, Minister of Stoniekirk against Maxwell, *voce* PRESCRIPTION.

No 37.

3dly, The contract is homologated by constant observance for nearly a century and a half; on the part of Mr Brown and his predecessors.

Answered, As it has been found; that the glebe cannot be recovered, a decree of reduction of the contract would be altogether inept.

2dly, The contract was undoubtedly illegal; 1572, c. 48. Minister of Little Dunkeld, No 36. p. 5153. The right of bringing it under reduction was not confined to succeeding incumbents. The heritors themselves had a title to pursue, and therefore it is more reasonable that they should suffer from their having omitted to do so, than that the present incumbent should be injured by an illegal transaction, with which he had no concern. If it were held, that an incumbent is tied down by the culpable omissions of his predecessors, all the enactments of the Legislature, guarding against the dilapidation of benefices, would be frustrated.

3dly, The taking benefit of a reducible right, while it subsists, does not infer homologation; 27th February 1668, Chalmers against Wood, *voce* HOMOLOGATION; 12th March 1684, Archbishop of St Andrew's against Bethune, *IBIDEM*. It therefore ought not, *ex paritate rationis*, to bar a minister from applying for a new designation, his only mode of redress, when precluded by prescription from recovering the *ipsum corpus* of the glebe which has been dilapidated.

THE LORD ORDINARY sustained the defences of the Heritors.

On advising a reclaiming petition, with answers, it was

Observed on the Bench; Every clergyman must reside within his parish, and every minister of a landward parish is entitled to manse and glebe, beside a suitable provision out of the teinds. The transaction 1650 was therefore unlawful, and the minister is of consequence entitled to another manse and glebe.

THE COURT unanimously altered the interlocutor of the Lord Ordinary, and found, that the petitioner, notwithstanding of the contract 1650, is entitled to a manse and glebe, in the ordinary course of law.

Lord Ordinary, *Alvo*.
Clerk, *Sinclair*.

For the Heritors, *Wight*.

For the Minister, *W. Robertson*.

R. D.

Eol. Dic. v. 3. p. 251. Fac. Col. No 24. p. 50.