

knowledge of the presentee, and, therefore, a fair and honourable transaction, which the law would support. No 108.

THE COURT pronounced the following judgment :

“ THE LORDS find, that the transactions within mentioned, between the Earl of Galloway and Mr Maxwell of Cardiness, and James Gordon of Balmeg, and also the subsequent transaction between the said Mr Maxwell and James Gordon, were all simoniacal pactions, entered into *ob turpem causam, et contra bonos mores*, and, therefore, that no action lies upon the obligations granted relative thereto : Dismiss this action, assoilzie and decern ; but, in respect of the accession of the said Messrs Maxwell and Gordon to said transactions, they fine and amerciate Mr Maxwell in L. 30 Sterling, for the use of the poor ; and also Mr Gordon in L. 60 Sterling, for the use of the poor ; which sum they decern to be paid to David Ross, clerk to this process, to be disposed of as the Court shall think proper ; and declare, that all execution necessary shall pass at Mr Ross' instance, for recovery thereof.” Thereafter,

James Gordon having reclaimed, the Court, in consideration of his particular circumstances set forth in his petition, modified the fine formerly imposed upon him to L. 30 Sterling.

Act. *Walt. Campbell, Al. Murray.* Alt. *Dav. Dalrymple.* Clerk, *Ross.*

Fol. Dic. v. 4. p. 25. Fac. Col. No 150. p. 9.

1794. *January 22.* The Rev. DR BOYD *against* The EARL OF GALLOWAY.

IN 1769, the Earl of Galloway, patron and titular of the parish of Penninghame, granted a bond of annuity for L. 20 to Dr Boyd, the minister, which he afterwards gave up on receiving L. 300 Sterling.

Of the same date with the bond, the minister granted a missive to the Earl binding himself ‘ never to ask or sue for any augmentation of glebe or stipend.’

The Doctor, nevertheless, having brought a process of augmentation, the Earl, in bar of it, founded on the missive.

The Court, considering the transaction as *pactum illicitum*, repelled the objection.

The Earl, in a reclaiming petition,

Pleaded ; A minister is the unlimited proprietor of his stipend. He may assign it either gratuitously or for an onerous cause, during his life, although he should thereby render himself incapable of supporting his rank. As therefore an assignation from the pursuer, conveying to the Earl his whole stipend, on

No 109.

An obligation granted by a minister not to bring a process of augmentation in consideration of a sum of money received by him from the patron, is not binding.

No 109. receiving the L. 300, would have been binding on him, *a fortiori* must the mis-
sive in question, which only precludes him from augmenting it.

The interest of the benefice is not hurt by the bargain. On the contrary
by means of it the heritors will not have it in their power to plead a recent aug-
mentation against the next incumbent, who from the progressive improvement
of the country, will be entitled to a larger stipend than the present pursuer
could have expected.

THE LORDS refused the petition without answers.

For the Petitioner, *Dean of Faculty Erskine.*

R. D.

Fol. Dic. v. 4. p. 25. Fac. Col. No 97. p. 217.

See No 8. p. 331.

Bribery at burgh elections ;—*See BURGH ROYAL.*

Tutors and curators purchasing in the minors' debts ;—*See TUTOR and PUPIL.*

Usurious contracts ;—*See USURY.*

See FRAUD.

See APPENDIX.