

No. 34. to pay them in grain, would be to alter both the nature and extent of their payment.

Answered: Valuations in money are exceedingly unfavourable to the Minister, who, though nominally a party in the action, from the temporary nature of his right, seldom thinks it worth while to appear. The Court, however, will not suffer the interest of the benefice to suffer from his inattention; 30th November, 1791, Minister of Glenluce against the Earl of Galloway, (not reported; see APPENDIX).

Observed on the Bench: In later cases, the point has been settled in favour of the Heritors.

The Court altered the former interlocutor, and modified the stipend in money.

Act. *W. Robertson.*

Alt. *W. Murray.*

*D. D.*

*Fol. Dic. v. 4. p. 300. Fac. Coll. No. 39. p. 79.*

1795. June 3.

ANREW SKENE and JOHN ELMSLIE *against* The OFFICERS of STATE and Others.

No. 35.

Teinds vested in the Crown, in right of the Bishops, cannot be allocated in payment of stipend, till those heritably possessed by the proprietors of the lands are exhausted.

The Minister of the parish of Daviot having obtained an augmentation of his stipend, the Officers of the Crown gave in a scheme of locality, in which the teinds of certain lands were localled upon, *ultimo loco*, in respect they formerly belonged to the Bishop of Aberdeen, and were now in the hands of the Crown, in his right.

To this scheme Messrs. Skene and Elmslie, heritors in the parish, who had heritable rights to their teinds,

Objected: Although, in consequence of the act 1693, C. 23. teinds formerly belonging to Bishops cannot be purchased while they remain with the Crown, yet neither that nor any other statute has conferred upon them any privilege in point of allocation.

It is well known, that the chief cause for passing the act in question was, that, at its date, the Legislature had not wholly given up the idea of establishing Episcopacy in Scotland; but now, when the reason of the enactment no longer exists, there can be no ground for extending the advantages conferred by it. Accordingly, none of the writers on our law have said, that Bishops' teinds possess the privilege here contended for; and Erskine, B. 2. T. 10. § 4. seems to entertain the opposite opinion. See also 9th February, 1734, Don against Ker, (not reported; see APPENDIX); 16th July, 1788, Officers of State against Christie, No. 31. p. 14817.

Answered: Bishops being a superior order of Ministers, the tithes appropriated to their support could not be allocated for the maintenance of any inferior churchman, until those belonging to laymen were exhausted. And it was the object of the act 1693, that the tithes of Bishops should be possessed by the Crown, with every privilege which they formerly enjoyed, and particularly that now

claimed; Note upon Erskine, B. 2. T. 10. § 52. Edition 1785; 13th July, 1715, Minister of Arngask, (not reported; see APPENDIX); 7th March, 1770, Campbell of Lochnell, No. 22. p. 14796.

No. 35.

The Lord Ordinary repelled "the objection to the scheme of locality produced for the Officers of State."

On advising a reclaiming petition for Messrs. Skene and Elmslie, with answers, the Court, considering the law as completely fixed by the decision in the case of Campbell of Lochnell, unanimously "adhered to the interlocutor complained of, as to the general question, that Bishops' teinds are only liable to be localled upon *ultimo loco*; and, before further answer, ordained both parties to give in memorials upon the question, Whether the teinds of the lands in question belonged to the Bishop of Aberdeen, or to the Minister of Daviot, as parson of the parish."

Lord Ordinary, *Swinton*.For the Officers of State, &c. *Solicitor of Tithes Balfour*.Alt. *Rolland, Ja. Gordon*.*Fol. Dic. v. 4. p. 300. Fac. Coll. No. 172. p. 406.*

1795. December 9.

The HERITORS OF PORTMOAK *against* MRS. ANNE JEAN DOUGLAS.

The teinds of the lands of Kirkness, the property of Mrs. Anne Jean Douglas, in the parish of Portmoak, originally belonged to the Priory of St. Serf's Inch in Lochleven, and afterwards to the Priory of St. Andrew's. At the Reformation, they were vested in the Crown, and were bestowed by James VI. in 1586, on St. Leonard's College in St. Andrew's, which is described in the gift as founded by him for promoting the study of theology. This gift was ratified by act of Parliament in 1612.

Mrs. Douglas has a lease of her teinds from the College.

The family of Kinross are superiors of most of the lands in the parish, of which they are also patrons; and, in that capacity, they had right, under the acts 1690 and 1693, to the teinds not heritably disposed; but they have since granted heritable rights of them to most of their vassals.

The Minister of the parish having got an augmentation to his stipend, a scheme of locality was made up, in which a great part of the burden was laid on the lands of Kirkness, out of which no part of the old stipend had been paid, while those heritors who had heritable rights to their teinds were totally exempted. Mrs. Douglas objected, That the teinds of a college can only be burdened *ultimo loco*.

The heritors

Pleaded: The provision of a competent stipend to the Minister of the parish is a burden inherent on all possessors of teinds, who do not themselves officiate in

No. 36.

Teinds belonging to a college are not liable for stipend till those heritably disposed to the proprietors of the lands are exhausted.