

No. 96. the Minister's stipend. The quantity of grain specified is only descriptive as to the quantity then payable to the College; and stipend being an inherent burden upon teinds, absolute warrandice, in a tack of teinds, never comprehends future augmentations; Ersk. B. 2. T. 3. § 12. (Small Edition); Lumisden, 6th January, 1682, *voce* WARRANDICE; Plenderleath against Lord Tweeddale, 14th January, 1800, (not reported; see APPENDIX). Burdens imposed by law, the purchaser is always presumed to be aware of; and if he does not obtain special warrandice in such a case, he can have no claim of relief.

The Court adhered.

Lord Ordinary, *Polkemmet.*

Act. *Walker.*

Agent, *Wm. Walker.*

Alt. *D. Douglas.*

Agent, *Geo. Cumine, W. S.*

F.

*Fac. Coll. No. 107. p. 236.*

1803. *November 16.* DALGLEISH *against* The HERITORS of PEEBLES.

No. 97.

Where an heritor, in the course of a process of locality, surrenders his whole valued teind, instead of paying the stipend as allocated upon him, his proportion of victual-stipend must be laid upon the other heritors.

In 1793, Dr. William Dalgleish, Minister of Peebles, brought a process of augmentation of stipend, in which he prevailed. Before the locality was settled, Mr. John Anstruther, advocate, one of the heritors, obtained a decree of valuation of his teinds, (3d July, 1799,) at £.20 14s. In October, 1800, a scheme of locality was made out, localing upon these lands eleven bolls of meal, the same quantity of bear, and £.2 5s. 5d. in money.

Upon this, Mr. Anstruther produced his decree of valuation, accompanied with a minute, making a judicial surrender of his valued teind; which, though objected to on the part of the common agent, because the valuation was not obtained till after the augmentation was decreed to the Minister, was however sustained, (12th May, 1801). Dr. Dalgleish objected to the locality, which now substituted Mr. Anstruther's valued teind for the victual and money localled upon him; and, accordingly, the Lord Ordinary found, 27th January, 1802, "That the Minister's right to the stipend, as localled to him by the interlocutor of Court, partly in victual and partly in money, cannot be impaired or altered by the circumstance that Mr. Anstruther, one of the heritors, took the option of giving up his whole valued teind; and therefore remits to the Clerk to make a rectified locality, applying the whole of Mr. Anstruther's valued teind, and localing the remainder of the modified stipend, both in victual and money, upon the other heritors."

The heritors reclaimed, and

Pleaded: The judgment in Lamington, No. 38. p. 14827. out of which this question has arisen, decides this point; for, while it is ascertained that victual stipend may be allocated on heritors whose teinds are valued in money, it declares, that at any time the heritor may be relieved, by surrendering his whole valued teind, and that this surrender is to be made to the Minister; making the valued teind exactly a surrogate for the stipend localled upon him, and without the necessity of a reduction of the locality, whenever any of the heritors avails himself of this

option. An innovation has been introduced, by localling victual where the teinds are valued in money, in order to maintain an equality of burden upon the heritors paying stipend; but if, when an heritor surrenders his money-teind, his proportion of victual is to be found by the other heritors, more of them will follow the same example; the grievance will increase progressively, till the whole victual-teind of the parish may fall upon the heritors who have heritable rights to their teinds, and who, instead of being in the most favoured situation, will thus pay, not the proportion merely from their own lands, but from those belonging to their neighbours. It may fall, too, upon one whose lands are not suited for raising any species of grain; and, in a year of scarcity, the grievance will be intolerable, by being obliged to furnish grain, for which the money-teind of the other heritors, which he receives in lieu of it, bears but a very small proportion.

Answered: A stipend has been modified, proper in the circumstances of the parish; and though it is proper that no heritor should pay more stipend than his valued teind, yet there is no reason that the Minister should suffer by an heritor surrendering his teinds, after a certain proportion of the augmented stipend has been localled upon him. The Minister is entitled to the stipend modified by the Court, which constitutes a burden upon the whole teinds of the parish at large. The proportion of victual or money payable by each individual heritor is a matter to be adjusted among themselves, with which he has no concern. There is a sufficiency of teinds in the parish to answer the stipend as modified; and as the locality has not been finally approved of, the deficiency by this surrender can be laid upon the other heritors by a rectified locality, without the necessity of any new process or action of reduction.

The Court (33d June, 1802,) altered the Lord Ordinary's interlocutor.

But, upon advising a reclaiming petition, with answers, (November 16, 1803,) the Lords "alter their own interlocutor, and adhere to that of the Lord Ordinary, dated 27th January, 1802; and find the heritors liable to the pursuer in the expense he has been put to in the litigation on this question."

Lord Ordinary, *Dunsinnan.*

Act. *Baird.*

Agent, *Wm. Molle, W. S.*

Alt. *Montgomery.*

Agent, *Tho. Cranston, W. S.*

F.

*Fac. Coll. No. 119. p. 265.*