

No 357.

§ 38.; 11th December 1705, Murray, No 132. p. 9001; nor against a fiar, upon a decree obtained against a liferenter. But a minister does not represent his predecessor; and his right both to the spirituality and temporality of the benefice is merely usufructuary, being restrained from alienating the former by common law, and the latter by statute 1572, § 48. As a minister, therefore, cannot directly hurt the benefice by dilapidation, it follows *a paritate-rationis*, that he cannot do so indirectly, by omitting to state the proper defences in any action with regard to it.

THE LORDS refused the petition, without answers.

Lord Ordinary, *Justice-Clerk Braxfield.*

For the Petitioners, *W. Robertson.*

*R. D.*

*Fac. Col. No 72. p. 165.*

No 358.

In reducing a decree of an inferior court, the pursuer of the reduction must extract the decree, so as to satisfy the production, if the defender does not make any claim under it.

1804. February 24.

CLARK *against* WATSON and Others.

WILLIAM CLARK, owner of the Midsummer Blossom, brought an action before the Court of Admiralty against John Watson, advocate in Aberdeen, and others, underwriters on the freight on a voyage from Honduras to London, for payment of the sums underwritten by them.

The Judge-Admiral assolizied the defenders, but found no expenses due to either party.

A reduction of this decree was brought into the Court of Session, in which it was disputed, which of the parties was to be at the expense of extracting the decree of the Judge-Admiral, in order to satisfy the production.

The Lord Ordinary verbally reported this incidental point to the Court, who were clear, that the pursuer in the reduction must extract the decree at his own expense, when the other party makes no demand under it. The question had already more than once been so decided; case of Norman Morison against Underwriters in Greenock, about the year 1792 or 1793; and a subsequent case to the same purpose in 1799, *see* APPENDIX.

Lord Ordinary, *Craig.*

Act. Clerk.

Agent, *P. Irvine, W. S.*

Alt. *Gillies.*

Agents, *G. Robinson, W. S.*

*R. Ainslie, W. S.*

*F.*

*Fac. Col. No 149. p. 332.*