No. 42.

The Court, (27th May, 1801,) repelled the defences offered on the part of the heritors, and found, "That in allocating the pursuer's stipend as modified, after continuing the old stipend drawn by him, conform to use and wont, and after exhausting any other free teind in his parish, the pursuer is entitled to all, or as much of the victual presently paid out of the teinds of Newhaven to the Minister of St. Cuthbert's, as may be necessary for completing his said modified stipend." And upon advising a reclaiming petition, with answers, they adhered to this interlocutor.

It is to be observed, that the Ministers of St. Cuthbert's were nowise concerned in the decision of this cause, as it was admitted on all hands, that there was abundance of teind unappropriated in their parish, independent of these lands of Newhaven; and as it was of no sort of consequence to them from what teinds in their parish their stipend was paid, they made no compearance.

Lord Ordinary, *Glenlee.* For Minister, *Robertson, Ar. Campbell, junior.*
Agent, *Geo. Andrew.* For Heritors, *Craigie, Douglas.* Agent, *Ja. Steel.*

Fac. Coll. No. 31. *p.* 62.

1805. *January* 31. ANDERSON *against* URQUHART.

No. 43.
A Minister is entitled to interest upon his augmented stipend from the date of a charge upon his decree of modification, although the locality had not then been adjusted.

In the year 1796, the Reverend John Anderson, Minister of the parishes of Stronsay and Eday, obtained an augmentation of stipend, commencing in 1791. Having extracted the decree of modification, he charged Mrs. Elizabeth Trail Urquhart of Elsness, one of the heritors, for the stipend due for seven years and a half preceding the charge, (3d April, 1799.) The charge was suspended; but the letters were found orderly proceeded by the Lord Ordinary, and also, (17th November, 1802,) by the Court.

The charger now raised a summons, concluding for payment of interest on the sums charged for from the date of the charge. This was conjoined with the process of suspension.

The cause was reported, when the charger

Pleaded: Whoever has intromitted with money belonging to another, or has unjustly detained it, is in general liable for interest, at least from the time that a legal demand has been made for it. This is not so much from any real or supposed *mora*, but rather as a recompense to the creditor for being deprived of the use of his money; Ersk. B. 3. Tit. 3. § 80. The charge for stipend having been declared well founded, it has been in fact pronounced, that the charger was entitled to payment at the time the demand was made. If it had been then paid, he would have had the benefit of the interest. The heritor, by refusing payment, has obtained all this benefit, which now, that the resistance has been declared illegal, he must communicate to the charger. Otherwise a groundless suspension would place a person in a better situation, than if he had at once paid his debt.

In all payments of an alimentary nature, interest seems to be due *ex lege*, when the payments are not made at the proper terms; and stipends are alimentary. Wright against Kennedy, 18th December, 1804*. No. 43.

Answered: Interest is not due at common law, but is exigible only by statute, or in consequence of special paction, unless very undue delay in payment can be established. Even a statute (1681, C. 20.) was required to make a debt charged on, and for which the debtor has been denounced, bear interest. A charge of itself is not sufficient. Nor can any delay be imputed to a person for not making payment of a debt, the extent of which he does not know. A decree of augmentation lays a certain burden upon the teinds of the parish at large; but no individual heritor can know the extent of the sum exigible from him, till the locality ascertains this point. Till then he never can incur the blame of *mora*. The heritor may indeed be charged by the Minister to pay to the extent of his teinds, leaving him to obtain his relief from the other heritors, when the proportion of each is adjusted by the locality. But this does not make the heritor, on that account, debtor to the Minister to the full extent of his teinds; nor can it be incumbent upon him to go to the Minister, and offer him the full fifth of the rental of his estate, otherwise that he must be liable in interest. But no diligence has been used, such as the law declares to be sufficient for making the sums bear interest.

The Court decerned in the action, and found interest due from the date of the charge.

Lord Ordinary, *Meadowbank*. For Charger, *Robertson*. Agent, *Th. Gordon, W. S.*
Alt. *Hay*. Agent, *A. Youngson, W. S.* Clerk, *Mackenzie*.

F. *Fac. Coll. No. 195. p. 437.*

*** Found, in several cases not collected, relative to the teinds belonging to the Colleges of Glasgow and Aberdeen, in 1792 and 1793, That all such teinds were liable in stipend to the Minister, when there were no others in the parish.

* This case has not been reported; because, although the interlocutor of the Lord Ordinary, finding interest payable from the term of Whitsunday after each year's stipend became due, was adhered to by the Court, the general question does not seem to be decided by it. The opinion of several of the Judges rested upon this, that there had been a very considerable delay occasioned in fixing the sum to be paid on account of the bygone victual stipend, otherwise no interest could have been due upon what was not charged for, nor localled, nor liquidated by any ascertained rate of conversion. Some of the Judges, indeed, held, that on all alimentary payments interest is due; and that stipend is of the nature of aliment. But this was not expressed to be the opinion of the majority.

See TEINDS.

See TERM LEGAL and CONVENTIONAL.

See APPENDIX.