IN THE HOUSE OF LORDS.

The Rev. ARCHIBALD M'LEA, Doctor in Divinity, - - } *Plaintiff in Error.*

JAMES WALKER, Sheriff's Officer, in Rothsay - - } *Defendant in Error.*

THE stipendiary clergy in Scotland are liable to the payment of duties on their manses, parsonages, and glebes, by the stat. 43 Geo. III, c. 122, and 46 Geo. III, c. 65, and the assessed taxes imposed by the 48 Geo. III, c. 55; and are not exempted generally from taxation by the general laws of Scotland, nor by the Scots act 1593, c. 166.

Semble that they are also liable in respect of stipend, although by the stat. 1593, c. 166, it is ordained, "that all minister's stipends, in time cumming, be free "from all tackes, pensiones, *taxations*, or impositiones "quhatsumever, notwithstanding of onie gift or dis-"position made in the contrair," &c.

The word "taxation" in the act 1593, c. 166, is to be construed by considering the recital of the act; the occasion of the enactment and the other words which are coupled in the same clause, with the word "taxation."

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THIS cause arose out of a claim advanced on behalf of the clergy of the church of Scotland, that their order was entitled in law to a privilege of exemption from taxes.

In order to try the validity of this claim, the plaintiff in error brought, in the Court of Exchequer in Scotland, an action of trespass against the defendant in error, to recover damages for the seizure of a horse which was taken in execution under the circumstances stated in the special verdict subjoined.

The defendant pleaded the general issue, and the

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Special verdict.

case having been tried by a jury, the following special verdict was returned: "The jurors, upon their "oaths, say that the defendant took, &c. That when "the defendant so took the said horse, he acted in "execution of two warrants granted by the sheriff "substitute of the shire of Bute, on two certificates "and petitions at the instance of Archibald M'Lea, "collector of taxes for the burgh of Rothsay, against "the plaintiff, both of which warrants were dated "the 25th May 18.1, and authorized the poinding "of the goods and effects of the plaintiff, for the "recovery of the sum of 26 *l.* 5 *s.* 7 *d.* being the "amount of property duty for the year, from "the 5th day of April 1809 to the 5th day of "April 1810, assessed upon the plaintiff by the "commissioners for putting in execution the act "46 Geo. III. cap. 65, for the burgh of Rothsay; "for and in respect of his manse, glebe, and stipend, "as minister of Rothsay; and for recovery of the "sum of 4 *l.* 3 *s.* being the amount of assessed taxes "for the year ending at Whitsunday 1811, upon "the following articles: to wit; one occasional ser-"vant the sum of 6 *s.* one riding horse the sum "of 2 *l.* 13 *s.* 6 *d.* and hair powder duty the sum "of 1 *l.* 3 *s.* 6 *d.* amounting in whole to the afore-"said sum of 4 *l.* 3 *s.* and the expenses allowed "by the law for making the same effectual; and "to which last mentioned sum the plaintiff had "been assessed under the provisions of the statute "43 Geo. III, cap. 156, and 48 Geo. III, cap. 55.

"And the jurors further say, that the plaintiff is "a clergyman of the established church of Scotland, "&c. and that the sum of 26 *l.* 5 *s.* 7 *d.* was assessed

" upon the plaintiff in respect of the profits arising to " him from his said living as minister of Rothsay.

" And if upon the whole matter," &c.

Upon this special verdict the case was argued before the Court of Exchequer in Scotland, and on the 4th of July 1812, the Court gave judgment for the Defendant.

Against this judgment, the present writ of error was brought.

On behalf of the Plaintiff in error.

Argument for Plaintiff in error.

By the law and practice of Scotland, from the Reformation downwards, neither the stipend, glebe, nor manse of the ministers of the established church is chargeable with any public burden. This immunity is part of the public law of the land, which has not been altered by any of the statutes referred to in the verdict upon the record.

Before the Reformation, the clergy of Scotland possessed all the tithes, and one fourth of the lands of the kingdom. They paid one-half of all the taxes imposed upon the land and its fruits. They also made the contributions required of them to the Pope. They paid a fifth penny of their benefices to the King, and on extraordinary occasions they paid tenths.

When the Reformation made its way into Scotland, all the popish establishments were swept away, the King and the aristocracy of the country appropriated all the property and revenues of the clergy, and it was some time before the protestant ministers acquired right to any permanent provision.

The first act that appears upon the subject is one

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of the Privy Council, and bears date in the year 1561. It was afterwards confirmed by act of parliament 1567, cap. 10, which, upon the preamble, that "the ministers have been long defrauded of their "stipends sua that they are becomin in great poverty "and necessity; statutes and ordaines that the haill "thrids of the haill benefices of this realm sall now "instantly and in all times to come, first be payed "to the ministers of the Evangel of Jesus Christ "and their successors; ay and quhill the kirk come "to the full possession of their proper patrimonie "quhilk is the teindes. Providing always, that the col-"lectors of the saidis ministers make zeirlie compt in "the checker of their intromission sua that the mini-"sters may be first answered of their stipendis apper-"teyning to everie ane of them. And the rest and su-"perplus to be applied to our Soveraine Lord's use."

By statute 1572, cap. 52, an act of secret council was ratified, setting apart all benefices not exceeding 300 marks, as a provision for qualified ministers.

In the year 1581, an act was passed, according to which the whole kingdom of Scotland is divided into certain parishes, which were intended to be of moderate bounds, and for every one of which a minister was to be appointed, having a suitable sti-

1581, c. 100. pend. The words of the act are, "It being found "maist difficil that in the charge of plurality of kirks "ony ane minister may instruct mony flocks, there-"fore it is thochet expedient, statuted and ordained, "be our Sovereign Lord and his three estates of "this present parliament, that every parish kirk and "sameikle bounds as sall be found to be a sufficient "and competent parochin, therefoir sall have their

" own pastour with a sufficient and reasonable *stipend* " according to the stait and habilitie of the place."

The teinds of the benefices in which the parish is locally situated were in almost all cases burdened with the stipends here referred to, which were granted to the clergy in the form of warrants called assignations by the commissioners of teinds against the titulars of the respective benefices, authorizing and requiring them to make payment to the minister of a certain number of bolls, or a certain sum of money in name of stipend. Under these warrants, the minister had no right to any teind; but merely to a certain quantity of victual or a certain sum of money, while the titular remained proprietor of the whole teinds, and continued to draw them either in his own name or by means of his tacksman. These stipends form the principal part of the income of the clergy at this day. They have no other but that which arises from their glebes, which have their origin in the operations of the same æra.

By statute 1587, cap. 29, parliament upon the preamble that the church owed their temporalities to the improvident and profuse liberality of the crown, that the church had no longer any use for that part of their property, while on the other hand the crown stood much in need of it, " unities, annexies, and " incorporates to the crown of this realm to remain " therewith annexed, and as it were propertie thereof " in all time cumming, and with our said Soveraine " Lord and his successors for ever, all and sindrie " lands, lordshipes, barronnies, castles, towres, for- " talices, mansions, manour places, milnes, multures, " wooddes, schawes, parks, fischings, townes, villages, 1587, c. 29.

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"burrowes in regalities, and barronie annual rents, "tenents, reversions, customes, great and small feu "farmes, tennents, tennandries, and service of free "tennents. And all and sundrie utheris commo- "dities, profites and emoluments quhatsumever, "alsweill to burgh as to land (except as hereafter "sall be excepted in this present acte) quhilkis "at the day and dait of thir presents, viz. the "xxix day of July the zeir of God 1587 zeirs, "perteinis to quhatsumever archbishoppe, bishope, "abbote, prior, prioreses, &c. Except and alsua "foorth of the said annexation, all and quhat- "sumever mansiones of parsonages and vicarages "annexed to paroche kirkes with four aikers of "glebe maiste west to the kirk, and commodious for "the minister serving the cure theirof for his better "residence thereat, quhilk sall not be nor ar com- "prehended in the said annexation. But sall re- "main with the minister, parson or vicar or uthur "quha sall be provided thereto for serving the cure "according to the actes of parliament maid there- "anent of before."

Stat. 1572, c. 48. Stat. 1578, c. 62. Stat. 1621, c. 10.

These were the first glebes in Scotland after the Reformation. They were part of the church lands reserved to the ministers upon the new establishment, and it was provided that they should not be liable either in teind or feu duty. Later statutes have authorized the designations of glebes out of lay-lands, but they have always been held in law entitled to the same privileges as the original glebes set apart by the former statutes. They are allodial, neither paying any feu duty nor acknowledging any superior. No teinds are exigible out of their fruits, and they have neither been valued in the cess books,

nor charged with cess or any other burthen imposed for behoof of the state or of the parish; in respect, as the stat. 1621, c. 10, expresses it, "that the same "is dedicated and appointed *ad pios usus.*"

These provisions for the clergy were from the beginning privileged. The act 1587, c. 29, declares they shall "be free of first year's fruits and fifth "penny." The act 1592, c. 123, narrates that by several previous statutes which are not now extant, they were preferable to the king upon the benefices burdened with the stipend. Finally, in the year 1593, an act was passed in the following terms: "For saemeikle as sundrie ministers quha has been "in long possession of their stipends be verteu of "their assignations, are troubled be pensioners or "tacksmen, quha hes tane in tack gift or pension, "either their haill stipends or an great pairt thereof, "and hes obtained ratification in parliament there-"upon. Therefore our Soveraine Lord with advice "of his estates of this present parliament, ordaines "that all ministers stipends in time cumming, be "free from all tackes pensiones *taxations or im-*"*positiones quhalsumever*, notwithstanding of onie "gift or disposition made in the contrair to the effect "that the ministeres may bruik their stipends peace-"ably inall time cumming, without any trouble "according to their assignations."

Stat. 1587, c. 26. Stat. 1592, c. 123. and the Stat. 1593, c. 166. declare stipends free of all impositions.

The first taxation imposed after the passing of this act was in the year 1597. Parliament grants 200,000 merks to the King, 100,000 of which is to be paid by the spiritual estate, 66,666*l.* 8*s.* 10*d.* by the barons freeholders, and 33,333*l.* 4*s.* 6*d.* by the burghs of the realm. The portion falling on the spiritual estates is to be paid by the bishops, abbots,

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and beneficed persons, and by them alone. In this list ministers having stipends are not included. Further, these beneficed persons were required to pay not only for what was in their own natural possession, but for the income drawn by those possessing under them; and while for their relief it is provided that they shall have recourse against "their vassals, feuars, tacksmen, and pensioners," it is not provided that they shall have relief from ministers possessing part of the teinds by the assignations before-mentioned; and it is not alleged that they ever had any relief from this body.

1633, Act 1.

In the year 1633, the lay members of parliament granted to King Charles the First, thirty shillings in the pound upon *the old extent** for six years, beginning with the year 1634, and "the archbishops "and bishops for the spiritual estate, granted a proportional supply out of all archbishopricks, bishopricks, abbacies, priories, and other inferior benefices, as they have been accustomed to be taxed, in "all time bygone whensoever, the temporal lands of "this kingdom were stented to thirty shillings the "pound land, of old extent." That act further contains the following general revocation of all privileges and immunities; "And further his Majestie "and the said estates annul and discharge all privileges and immunities whatsoever, whereby any "persons may think themselves free of payment of "their present taxation; the privileges granted to "the ordinary senators of the colledge of justice, and "the taxation of benefices given, disponed, and mortified for the entertainment of the universities,

* For an explanation of the old extent, see *ante*, p. 164. note.

" colleges, and hospitals within this kingdom only " excepted."

Neither stipends nor glebes were ever charged with any portion of this tax; it appears, however, that *benefices* such as parsonages and vicarages, though set apart for the sustenance of the reformed clergy, and at the same time not greater than an ordinary stipend, in respect of their being *benefices*, were burthened with this or similar taxations. For among the rescinded acts there appears a statute, the preamble of which bears, that the clergy holding vicarages and other small benefices had been grievously oppressed by the collectors of the revenue, that such exactions were contrary to law as well as equity, and declaring stipends, and *benefices* similar to stipends, free of all taxation. The act is entitled, " An " act for freeing of vicarages provided to ministers " for their stipends of taxations;" and the preamble is, " Our Soveraigne Lord, and estates of parliament, " considering the distractions that ministers are " brought into, and other prejudices and losses sus- " tained by them, by taxations *craved of vicarages* " which are assigned and provided to them, as a part " of their stipends in so far as they are assigned and " provided, and that *it is against all reason and* " *equitie, and former acts of parliament*, that mini- " sters' stipend should be burdened with impositions " and taxations; therefore statutes and ordaines (for " eschewing of these inconveniences and prejudices,) " that no vicarage teinds, nor rents thereof assigned " or provided, or to be assigned or provided, to mini- " sters as a part of their stipends, be burdened or " affected with any taxations of impositions bygone, " owing, unpaid, or in time coming," &c. Upon this

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preamble, vicarages, provided they make part of the modified stipend, are declared to be free of all taxations, in the same manner as all other stipends were admitted to be in virtue of the previous acts of parliament. As to stipends not in the predicament of a benefice, there was no occasion to make any enactment, because they never had been charged with any tax.

During the civil wars, and afterwards during the usurpation, full effect was given to these previous statutes, and in particular in the execution of a measure of Oliver Cromwell, the express purpose of which was, to make a fair and equal valuation of all the property in Scotland, for the purpose of a general taxation, without regard to any private privilege whatever. The legislative provisions were as comprehensive as general terms can make them; and yet the stipends and glebes of ministers were considered as protected by the public law of the land, and held to be free of all burden*.

On this occasion, every county proceeded by itself to value its own lands. The proceedings of several counties are still extant; and, for all Scotland, the rent thus valued, as it stood in the year 1656, is the rule according to which the cess is levied at this day. Yet there is no instance of teinds forming part of a modified stipend, or of glebes, being valued or subjected to any part of the burden.

1656, c. 14. The words of Cromwell's act are, "And for the "more equal and right proportioning of the several "sums before mentioned, be it further enacted by "the authority aforesaid, that the several sums of "money to be rated, assessed, and levied, in vertue

* See Wight, vol. 1. p. 182.

" of this act, shall be taxed and assessed by a pound
" rate on the several parishes in the respective coun-
" ties, cities, and places aforesaid, *for all and every*
" *their lands, tenements, hereditaments, annuities,*
" *rents*, parks, warrens, goods, chattels, stock, mer-
" chandizes, office, *or any other real or personal estate*
" *whatsoever, according to the value thereof*; that is
" to say, so much upon every twenty shilling rent or
" yearly value of land and real estate, and so much
" upon money, stock, and other personal estate, by
" an equal rate, (wherein every twenty pounds in
" money, stock, or other personal estate, shall bear
" the like charge as shall be laid upon every twenty
" shillings yearly rent or yearly value of land,) as
" will raise the monthly sum or sums charged upon
" the respective counties, cities, and towns aforesaid.
" For the better effecting whereof, it is hereby
" enacted, that the several and respective commis-
" sioners hereby appointed for the several and re-
" spective counties, cities, and towns aforesaid, shall
" meet together at the most common and usual place
" of meeting in each of the said counties, cities, and
" towns respectively, on or before the 15th day of
" July, in this present year 1657.

" And the said commissioners, or so many of them
" as shall then and there attend and be present, shall
" cause this present act to be put in execution, ac-
" cording to their best discretion and judgment; and
" having agreed amongst themselves of some general
" rules and directions for the doing thereof, and ap-
" pointed another time for the second general meet-
" ing, which shall be on or before the 30th day of
" July aforesaid at the furthest, to receive the returns
" from the several counties, stewartries, cities, bur-

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" roughs, parishes, and places; and there with all " convenient speed, they, or any two or more of them, " shall nominate and appoint two or three of the " honest and able inhabitants in the several and re- " spective parishes to be surveyors and assessors, who " (or any two of them) are to ascertain and rate the " yearly value and profits of the said parishes and " places for which they shall be appointed surveyors " and assessors, and shall return the same to the said " commissioners, or to such person or persons as " shall be appointed to receive the same." The act also contains the following clause, abolishing all privileges: " And be it hereby enacted by the autho- " rity aforesaid, that *no privileged place or person*, " body politique or corporate, within the cities, coun- " ties, towns, and places aforesaid, *shall be exempted* " *from the said assessments and taxes*, but that they " and every of them, and also all fee farm rents, and " other rents of the late king's revenues, all rents " and other sums received by the late court of ward, " out of any infants or lunatique estates, and all other " manner of rents, payment, and sums of money and " annuities issuing out of any lands within any city " or county, shall be lyable towards the payment of " any sum by this act to be taxed and levied."

The act also contains the following exception: " Provided also, that nothing contained in this act " shall be extended to charge any of the masters " or scholars of the universities or colledges in Scot- " land, or any other officers in the said universities, " colledges, or schools of any hospital or alms-houses " for and in regard of any stipend, wages, or profits " whatsoever arising or growing due to them in " respect of the several places and employments in

"the said universities, colleges, schools, hospitals, "or alms houses, for or in respect of any rents or "revenues being to be received or disbursed for the "immediate use and relief of the same." It was necessary expressly to exempt the masters and scholars of the universities, because their income was by the general law of Scotland subject to taxation; but it was held unnecessary specially to exempt the clergy, because under the general law they had an immunity.

This enactment was carried into full effect during the Usurpation. But the stipends and glebes of the established clergy in Scotland continued, notwithstanding this statute, and the taxation which followed upon it, free of all imposition whatever. After the Restoration, from antipathy to all Cromwell's measures, the rule of valued land * was abandoned, and that of the previous extent adopted in the levying of the land-tax.

Afterwards it was thought expedient to return to the new valuation, and in order to raise the next supply that was granted, which was by act of convention† in the year 1667, commissioners were appointed, with power "to call for and consider the valuations

Act of Convention, 23d Jan. 1667.

* See Vol. 2. p. 1, note.

† This was one of those "*Conventions of Estates*," which were occasionally called upon sudden exigencies, real or supposed. The formal citation of all those who had right to sit in parliament, was on these occasions omitted. The king, on the plea of emergency, called together as many of the three estates as could be speedily assembled. By a statute of James IV. (1503, c. 85.) it was ordained, that "the commissaries and "headsmen of boroughs be warned quhen taxes or contribu-"tiones are given, &c." The powers of these conventions were limited to the particular business for which they were called.

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" of all lands, *teinds*, and other real estates within " their respective shires and burghs; and such as they " shall find just and equal, that they approve thereof " and appoint the same to be the rule for levying and raising this present supply." Where estates have been split among different proprietors since Cromwell's valuation, or "when they shall find any just cause " by inequality, the commissioners are to value of " new again."

Notwithstanding these comprehensive words, ministers stipends were not valued, or taxed in any way; and there is a clause in this act, from which it appears that the general expressions above used could not be extended to glebes or stipends. Power is given in these terms: " As also to value the rent of all arch- " bishopricks, bishopricks, and other benefices *in so* " *far as they exceed the ordinary value of modified* " *stipends*: provided always, that notwithstanding " of the valuation thereof within the shire where " there is any such lands, teinds, or other real rent, " the total aud proportions above specified of the " said shires continue without any alteration." This shows clearly that stipends, and benefices not better than modified stipends, were not to be valued; and accordingly they were not valued.

The valuations made in virtue of this act have regulated such taxations ever since. The heritable property, exempted under that act, has been exempted ever since; and the property burdened, whether lands or teinds, have ever since been burdened according to the valuations then made.

The next supply which was granted, was in the 1670. year 1670, by act of parliament, which appoints it

" to be raised and paid out of the land rent, in the " same manner, according to the same proportion, " and with the same exceptions that the former sup- " ply granted to his Majesty by the convention of " estates, in January 1667, was raised."

A new supply was granted in the year 1672, to be raised and paid according to the valuation of the same act of convention. 1672.

In the year 1678 a further supply was granted by an act of convention, which it is declared shall be levied " according to the present valuation." 1678.

In the year 1681 an act of parliament was passed, granting an additional supply, which in like manner is to be levied in the manner and proportions prescribed by the act of convention. This was a large supply, amounting to 1,800,000 *l.* Scots, and it was thought proper to give the landed proprietors some relief from the vassals, feuars, tenants, subtenants, and inhabitants in their lands. In particular, they were to have relief from each gentleman, of a sum not exceeding 6 *l.* Scots, for each tenant 4 *l.* Scots, and for each tradesman, cottar, or servant, 20 *s.* Scots. 1681.

After these acts, the mode of levying the supply became established, and so much understood as a matter of course over the whole nation, that in many acts of parliament the supply is granted without specifying how it is to be levied, while in others the rule of the convention 1667 is especially prescribed.

This however made no difference in practice; for, whether the act of parliament was express or silent on the subject, the will of the legislature was understood to be, that the rules of the act of convention

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1690, c. 6.

1667 should be observed, and both stipends and glebes left unburdened.

After the revolution all personal privileges were expressly recalled. By statute 1690, c. 6. a new supply is granted; and it is declared, "That no per-"son or persons shall be exeemed from payment of "their proportions of this supply for their lands "upon any pretext whatsoever, excepting mortified "lands allenarly notwithstanding of any former law, "privilege, or act of parliament in the contrary." These terms are sufficiently comprehensive, to take away any privilege whatever; but yet they were not held sufficient in law to take away the exemption in favour of stipends and glebes, which by the public

Cap. 9. law were held not to be taxable subjects. Accordingly the very same parliament, while it gives the heritor relief against gentlemen, tenants, feuars, tradesmen, and cottars, gives him no relief against clergymen.

A new supply was granted in the parliament,

1693, c. 2. 1693, c. 2. which in like manner declares in the most peremptory terms "that no person or persons "shall be exempted from payment of their pro-"portions of this supply for their lands upon any "pretext whatever."

Even these words were not held sufficient to affect the right of the clergy to immunity, in respect of their glebes, mansions, and stipends.

Cap. 9. In the same session of parliament, however, a poll-tax was imposed, by which it is ordained that all persons of "whomsoever" age, sex, or quality shall be subject and liable to the poll-tax of six shillings Scots per head, except poor persons who live upon

charity, and children under the age of sixteen years. Persons of higher rank are ordained to pay according to their presumed wealth, and in particular *all ministers* having benefices *or stipends*, and parish kirks not planted, shall pay twelve pounds of poll. Here the clergy are burdened, because the tax has no connection with land or teinds, or heritable income of any kind, but is a personal tax not falling under the general law by which the property of the clergy is exempted.

Another poll-tax was afterwards imposed by parliament, but it was conceived to be unconstitutional to subject the clergy even to a personal tax, and accordingly they were omitted, which could not have happened *per incuriam*, while every other desscription of person is burdened. 1695, c. 10.

The same immunity was preserved by the clergy, notwithstanding the revocation of all previous personal exemptions in several subsequent statutes. In all of these it is declared, that no person or persons shall be exempted from payment of their proportion thereof, for their lands, upon any pretence whatever, excepting mortified lands; and yet, no contribution whatever was levied on the clergy. Under all the land-tax acts above mentioned, although the magistrates of royal burghs are empowered to assess the inhabitants, without exception, in relief of the burghs quota, no assessment has ever been imposed on manses or glebes within burghs*. 1702, c. 6. 1704, c. 4. 1705, c. 1706, c. 2.

* See the observations of Sir George M'Kenzie, upon the acts 1578, c. 62. 1587, c. 26. and 1593, c. 166. In the discussion of the act 1597, c. which directs the supply to be

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The plaintiff does not insist upon any *personal* privilege: but so far as respects the house and window duty, and the property duty, levied upon his manse and glebe and stipend, there is no law to justify the warrant specified in the pleadings. That the expressions used in the statutes are universally comprehensive, is not denied. They include all houses, lands, and annual income, which by the law of Scotland are subject to taxation; but the houses, glebes, and stipends of the clergy have not been in that predicament for more than two hundred years. It is extremely questionable whether after the act of union it was within the power of parliament to burden these subjects with any tax; and supposing that parliament had the power, the ancient immunities of the church could not be taken away without a formal repeal of the law conferring them, which is not to be found in the statutes referred to by the defendant.

According to the public law of Scotland, the manse, glebe, and stipend of the clergy were not taxable. If the most comprehensive form of words imposing the burden, accompanied with a revocation of all existing privileges, could have burdened these subjects, the commissioners under former acts must have included them; but they never did, and for this no reason can be assigned but that by law the subjects

levied according to the actual value of the lands, he says, "this "can be of no consequence to stipendiary ministers, seeing by act of "parliament, 162 James 6, parl. 13, they are freed and exempted "of all taxations and impositions." See also Forbes on Tithes, Erskine, b. 2, tit. 10, s. 50; Kaimes' Abridgment of the stat. 1593, c. 162; Spottiswood on Hope's Minor Practicks, tit. 2, s. 16; Craig, Feud. lib. 1. dieg. 12, s. 14,

were free of all imposition whatever, and not taxable. There may be countries where the property and the income of the clergy are subject to taxation, and there may be other countries where the churches and courts of justice, and all public property, are subject to taxes, payable by those who take benefit from it. But this never was the law of Scotland.

According to the articles of the union, that law is unalterable. The constitution of the church of Scotland, with all the rights and immunities belonging to it, was the object of great anxiety at the union, and it was not considered as expedient that the united parliament should have power to alter it. It was therefore made a condition of the union, that this should not be competent even to parliament. The only question is, whether it is not to be considered as part of that constitution, that the property set apart for the subsistence of the clergy should have an immunity from all taxation; in other words, whether any portion of it can be taken from the church, and used for the purposes of the state.

As to the particular expressions used in the property duty act, it may perhaps be maintained that they prove that parliament understood that there were teinds in Scotland belonging to ecclesiastical persons falling under the general provisions of that statute; for there is no doubt that in the rule for assessing the duties imposed, *teinds in Scotland* belonging to any ecclesiastical person are mentioned. But these expressions do not occur in the clause imposing the duty; and that clause does not contain a repeal of the previous law, declaring the property of the clergy free of all taxation. Neither the common nor

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the statute law of Scotland have been altered. The courts in Scotland will administer this statute to the subjects of Scotland precisely as they would have done if this union had never been made. This act could not have included the property of the clergy at any previous period, for it has been shown that a long succession of statutes, containing still broader and more comprehensive clauses were never so interpreted.

This is no new question. It occurred in every reign from James VI. down to the union; and during the whole of that period there is not to be found a lawyer who ever maintained that such expressions could affect the property of the clergy; while, on the other hand, every lawyer who has had occasion to speak upon the subject, gives it as his opinion, that such enactments do not embrace that property; and in practice the commissioners of the revenue never did charge either the stipend, glebe, or manse of the ministers with any tax. They held them free, not because the expressions of the revenue statutes did not embrace teinds, and lands, and houses, for as to that there could be no dispute; but because by the general law of Scotland, the teinds, lands, and houses of the clergy were held to be *public property*, and not subject to any tax.

The expressions used in the rule for assessing the property duty, do not apply to the property of the Scotch clergy. That they do not apply to their glebes and manses is obvious; and it is equally certain that they do not in general apply to their stipends. By the decrees in the Teind Court, a certain sum of money, or a certain number of bolls of

corn and meal, is modified as a stipend, and the minister has a right to demand that money and that quantity of victual from the titular, but he has nothing to do with the teinds of the lands. These belong to the titular or heritor whoever he be, who draws them, and he becomes personally responsible to the minister for the stipend modified. When therefore this rule speaks of teinds belonging to ecclesiastical persons, it can have no meaning, unless it holds the titulars, as the successors of the ancient clergy, to be entitled to this appellation. There may be eight or ten cases in Scotland, where the minister succeeding to the whole of an old benefice is the titular, but in general he is no more than a stipendiary, who has nothing to do with the teinds, but draws annually a sum of money, or a quantity of victual, from the titular or heritor. Accordingly Mr. Erskine says, "they are all stipendiaries."

Even private rights, in virtue of which individuals have enjoyed immunity from particular taxes, have never been held to be revoked by implication. If parliament found them inconvenient, and thought it necessary to take them away, they did so by an express act, and then they granted compensation.

A company of soap-boilers in Glasgow, for certain reasons, obtained an exemption from duties on soap, and although they were never mentioned in any subsequent act of parliament, yet they constantly enjoyed their exemption till they were deprived of it by special act of parliament, when they obtained 6,000 *l.* as a compensation for the loss.

Mr. Forbes of Culloden, by two unprinted acts of parliament, obtained an exemption from duties upon

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the spirits and malt made from grain which grew upon his estate. He was not particularly exempted in any excise acts afterwards made, yet he enjoyed his privilege till lately, when the act depriving him of it, provided a compensation to him of about 20,000*l.* after thc case had been submitted to a jury.

The Duke of Richmond's tax upon coals is an illustration of the same principle.

The statutes imposing the property and assessed taxes, contain no provision excluding this privilege. The maxim of law must therefore prevail—*Generalia non revocant specialia.* *Greer* v. *Mitchell**.

The word "stipend," in the schedule to the act 46 Geo. III. c. 65. is not applicable to the Scotch clergy; for it is not payable by his Majesty or out of the public revenue†. Nor does stipend come

* D. P. 27 April 1814, and see Co. Litt. 115 a. Comyns' Digest, tit. Parliament, R. 23. and Prescription, F. 3. *Rex* v. *Pugh*, Douglas's Reports, 1st edit. p. 179; Faculty Decisions, App. to vol. 10, Jan. 29th 1788. The Magistrates of Edinburgh against the College of Justice. The Duke of Queensberry and Earl of Hopetown.

† The word "stipend" occurs in schedule E. of the statute 43 Geo. III, c. 122, under the following title and context:

"Schedule of the rates and duties payable by persons having, "using, or exercising any public office or employment of profit.

"Upon every publick office or employment of profit, and upon "every annuity, pension or stipend *payable by his Majesty*, or out "of the *public revenue of Great Britain*, &c."

Schedule D. seems more comprehensive. By it, duties are imposed upon "the annual profits arising to any person resident "in Great Britain, from any *profession*, trade or *vocation*."

The same words are repeated in the schedules set forth in the subsequent statutes, and re-enacted with additional and special directions as to the mode of assessment, &c.

under the word "teinds," they are rather a burden upon the teinds.

As to personal taxes, such as that on the wearing of hair-powder, the plaintiff does not claim exemption. Those taxes stand on a different principle.

On the part of the defendant in error.

Argument for Defendant in error.

There is no evidence that the legislature of Scotland ever contemplated an exemption from taxes as a part of the provision of the reformed clergy. On the contrary, the maintenance of the clergy was always recognized to be a burden to which the holders of teinds were in justice subject, as the condition of their right; and a grant to the church of an exemption from taxes, of which the burden must evidently have rested on the nation at large, would have been contrary to this universal understanding. The exemption of the clergy from first fruits and the fifth penny, was of quite a different nature. These were parts of benefices which had been seized

The statute 46 Geo. III. c. 65, s. 74, provides, "that the "duties thereby granted, including the duties contained in the "schedule marked A. (which is a transcript from the former "act,) shall be assessed and charged under rules which shall be "construed to be a part of the act, and to refer to the said duties "as if the same had been inserted under a special enactment." The rules are then given under numbers. N° III. contains rules for estimating lands, &c. therein mentioned, which are not to be charged according to the preceding general rule. It then provides that the annual value of all the properties after described shall be understood to be the full or average amount for one year of the profits, &c. And in the second head of this rule are specified "all teinds in Scotland belonging to any ecclesiastical "person,"

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by the Pope; and, in his stead, had fallen to the King. These, therefore, formed a most natural subject for appropriating to the provision of the reformed clergy; and when the corruptions of Popery were in every respect overthrown and reprobated, it was reasonable, that the few protestant clergy who had obtained benefices, should not be subjected to this papal encroachment. The exemption of glebes from teind, was as little similar to the privilege under consideration. Teinds were no public tax, but a private property. The holders of teinds too were liable to maintain the clergy; and it would therefore have been absurd to draw teinds out of the legal provision of land modified to the clergy. Nor had it been ever agreeable to the canon or ecclesiastical law, that glebes should pay tithe. *In every respect, therefore, exemptions of glebes from teinds was totally dissimilar from a general exemption from national taxes.* These are not instances of an intention in the legislature of Scotland to provide for the clergy, by giving them a general privilege of exemption from taxation.

1593, c. 166. The act of 1593 cannot be construed to contain any general exemption of the clergy from taxation. It cannot be held to exempt them from any thing more than taxations or impositions from their stipends.

1663, c. 24. The statute 1663, c. 24, imposed a part of the expense of maintaining the universities *on the clergy alone*, which at that time were episcopal. The equity of this arrangement consisted in this, that the universities were regarded as part of the church establishment; and there is no reason to doubt, that the clergy had consented to it. The statute says,

"there being an expedient proposed." And it is to be presumed it was proposed by the clergy. When this was done, it was thought reasonable to declare, that it should not afford a preparative or precedent for imposing peculiar burdens on the clergy without their own consent. The reason of this evidently was, because the burden was imposed on the clergy alone, and might be supposed to afford a dangerous example to a parliament, in which they had little influence. That it did not allude to any general exemption of the clergy from taxation is sufficiently evinced by the act of convention, 1667, granting a supply or land-tax, in which the clergy are subjected. It is true, that stipends and benefices not exceeding a sufficient stipend, are exempted from this tax. But this is not by any reference to a general privilege previously existing in law. It is by a special expressed exemption; and it follows after similar exemptions of a much broader nature given to the members of the college of justice, to universities, colleges, schools, and hospitals. In the act 1667, there is a personal or poll-tax, from which, in like manner, the clergy are exempted. But here also the exemption follows after that of noblemen, barons, heritors, and life-renters; and it is followed by that of schoolmasters, readers, precenters, their wives and children; and also the college of justice, officers of the mint, and their wives, children, and servants. This affords no evidence of a general privilege of the clergy to be exempted from all taxation.

In the act of parliament 1693, chap. 9. imposing a poll-tax, it is confessed that the clergy are in- 1693, c. 9.

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cluded, even stipendiary ministers, being set down as a class liable to a distinct duty. In the other acts, imposing poll-taxes, the clergy are also included. Even the stipendiary clergy are not exempted, although they are not subjected to a rate of poll-tax as a distinct class; but by act 1695, chap. 10. they are liable as "*gentlemen.*" And even if they could have degraded themselves by repudiating that character, they are still liable to the lowest rate, which applies "to all persons of whatsoever age, "sex, or quality, except poor persons, who live "upon charity, and children under the age of "sixteen." And by act 1698, chap. 12. they are liable *as* "*unlanded gentlemen.*" It is said that a supplication was presented by the episcopal clergy for exemption: but it appears, that this claim was rejected, on the ground that clergy in general were *not* exempted. It appears by the records of parliament, that in 1704, Mr. Campbell and others, tacksmen of the poll-tax, 1695, gave in an account with regard to it, containing the total charge against them, and also the discharge. In this discharge, they stated the following article: "By the poll of the *episcopal* clergy 6,000*l.*" This was stated as a discharge, on the ground that they were not entitled to levy it. But on this article, the committee of parliament made the following observations. "There should be no allowance for the poll "of those clergymen, except their number be men-"tioned, in respect that no exemption subsists, "except for clergy of Edinburgh, *all other clergy* "*being liable.*" In what way the clergy of Edinburgh were exempted does not appear; but it cer-

1695, c. 10.

1698, c. 12. Records of Parl. Book 35. Vide App.

tainly was not by any general privilege possessed by the clergy at large. The observations of Mackenzie and Forbes cannot be supposed to relate to any universal exemption from taxation enjoyed by the clergy. Accordingly, it will not be said, that in practice the clergy ever pretended to any exemption from *customs or excise*, though customs were ancient in Scotland, and excise was introduced there in 1644. The treaty of union, if the clergy held any such privilege, would certainly have taken it away; or the subsequent revenue statutes, in which there is no trace of such a privilege, but clear proof that none existed. In the 48th Geo. III. chap. 55. there is expressly given to the clergy an exemption from hair-powder duty; but it is limited to such clergy whose incomes do not exceed 100*l.* per annum. There is a multitude of statutes imposing duties, from which it was never imagined that the clergy of Scotland had any privilege of exemption. As to the pretended exemption in practice from the window-duty, it appears from the minute-books of the exchequer, that the clergy never pretended to demand it as of right, but obtained, as a favour from the lords of the treasury, a delay of levying. They were put *insuper*, as it is called, until there should be time given to apply to parliament, for an express and special exemption or other relief to the clergy from that tax. But no existing right of exemption was either recognized or pretended.

Kaimes' Stat. Law, *voce* Customs, Excise.

48 Geo. 3. ch. 55.

The claims of the plaintiff to exemption from property-tax on his manse and glebe, and from assessed taxes on his horse, servant, and hair-powder,

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is void of foundation; for it cannot be pretended that there exists any *special* privilege in regard to these taxes. It is not pretended that the acts imposing them bestow any exemption from them upon the clergy of Scotland; nor can it be pretended, that any ancient statute affords any argument for such a privilege, by a prospective regulation.

As to the property-tax on the plaintiff's stipend, it appears to be said that a special exemption exists, in virtue of the Scotch statute of 1593. The clergy had no privilege of exemption in general, or from any one tax, land-tax, poll-tax, customs, or excise. But yet it is said the Legislature had given them a privilege of exemption from all taxes which could affect their stipends. It is said this exemption is still in force, and that it applies to the property-tax.

This argument is founded solely on the statute 1593, cap. 166. But the evils to be remedied by the statute, were claims made on the stipendiary clergy by private parties in virtue of tacks, gifts, or pensions. These might be ratified in parliament, but still were private rights. Not a word occurs in the act as to public taxes, of which indeed there existed none at that time which could be said to affect stipends. It is evident that the word "tax-"ations," which in the statute is thrown along with tacks, pensions, and impositions, alludes only to burdens imposed on the stipends in favour of private parties, and was used just as the word "impositions" was used to exclude grants under forms that might have been pretended not to be tacks or pensions. That is demonstrated by the words following;

"notwithstanding of onie gift or disposition maid "in the contrair." This shows it was only taxations or impositions by gift or disposition, that were contemplated, and it will not be said that a national revenue statute is a "gift or disposition." There is no doubt in what sense the word "taxation" is used in this statute, the context removing all ambiguity. The word may perhaps have been in other parts of the Statute-book applied to public taxes; but such was not its meaning in the statute 1593, chap. 166. The plaintiff is driven to contend, that under "gifts or dispositions," public statutes are included; and then he must contend, that the act 1593, was a law that ministers stipends should be free notwithstanding future public statutes made "in the "contrair;" an attempt to annul, by prospective provision, future statutes. No legislature has power so to bind itself.

The acts of supply, 1665 and 1667, which grant certain exemptions to the clergy, do it not by reference to any pre-existing privilege, but in express words as a new enactment. Nor is the privilege given limited to the clergy, but extends to other classes, particularly the College of Justice. The poll taxes, which in one instance specially, and in others by general expressions, affect stipendiary ministers, may be regarded as taxes affecting stipend, and is one instance to disprove the existence of such a privilege. The expression of Mackenzie and Forbes, of whom even the former wrote at the distance of near a century from the statute 1593, and both of whom are very inaccurate writers, are much too loose to afford authority of any value; but

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such as they are, they are by no means favourable to the plaintiff. In the other writers on Scotch Law, it is not said that any idea of such a privilege existing, or ever having existed, is to be found. There is therefore no reason to suppose it existed previously to the union. But if such a privilege had then been in existence, it must at that time have been taken away.

The treaty of union was made on the footing of equalizing as much as possible the privileges and advantages on the one hand, and the burden on the other hand, of each part of the United Kingdom. By the fourth article, as contained in the Scotch act of parliament ratifying the treaty, it was provided, "that all the subjects of the united kingdom of Great "Britain shall, from and after the union, have full "freedom and intercourse of trade and navigation to "and from any port or place within the said united "kingdom, and the dominions and plantations there-"unto belonging, and that there be a communication "of all other rights, privileges, and advantages, which "do or may belong to the subjects of either kingdom, "except where it is otherwise expressly agreed in "these articles." Then follows Article V. equalizing the right of Scotland and England, in regard to ships. Then Article VI. equalizing the customs, but containing an express provision, "excepting and reserving "the duties upon export and import of such particular "commodities from which any persons, the subjects "of either kingdom are specially liberated and ex-"empted by their *private* rights, which after the "Union, are to remain safe and entire to them in "all respects as before the same." Article XIV.

"provides, that there be no further exemption "insisted upon for any part of the united kingdom; "but that the consideration of any exemption be- "yond what are already agreed on in this treaty, "shall be left to the determination of the parliament "of Great Britain." And Article XXV. the concluding article, provides "that all laws and statutes "in either kingdom, so far as they are contrary to, "or inconsistent with the terms of these articles, or "any of them, shall, from and after the union, cease "and become void, and shall be so declared to be by "the respective parliaments of the said kingdom."

Under these Articles XIV. and XXV. taken in connection with the others, it appears that, if a privilege of exemption from taxation of a public, not private nature, had existed in Scotland, it must necessarily have been held in fairness to be repealed. And this is the more strengthened by the consideration that in the act for securing the protestant religion, and presbyterian church government, there is no mention whatever made of any privilege of the Scotch clergy of this nature. It is plain therefore, that while a variety of privileges and exemptions, both public and private, are secured in the treaty of union by express reservation, no privilege of the sort contended for by the plaintiff is there mentioned. And therefore, if it had existed, it must in equity have been held to be taken away. But the true inference is, that no such privilege existed.

For the Plaintiff in error—*Mr. Thomson*, and *Mr. Brougham.* Argued 25 March 1819.

For the Defendant in error—*The Lord Advocate*

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(*The Solicitor-General of Scotland*), and *Mr. Mackenzie.*

In the course, and at the end of the argument, Lord *Redesdale* made the following observations:—

The glebe and manse are not mentioned in the act of 1593. The stipend issues out of the teinds; and the act 46 Geo. III. c. 65, directs the teinds to be assessed according to their value. The language of the act appears to be a little confused. In the printed case for the plaintiff in error, it is not insisted that there is a special exemption for the manse and glebe. It is put by way of argument, that the land-tax was never charged upon the manse and glebe. But that practice furnishes no inference as to the property-tax, which is of a different nature.

30 March. *Lord Redesdale*: *—Upon a fair construction of the statute 1593, it is impossible to hold that the clergy are thereby exempt from public taxes and impositions.

The recital of that statute states a grievance by "pensioners and tacksmen" having in tack, gift, or pension, the stipends of the ministers. This cannot be intended of collectors of taxes, and when it proceeds to recite that the acts of these "pensioners "and tacksmen who have taken (the stipends) in "tack, gift or pension," that clearly applies to some *grant* made in the form of tack, gift or pension. Upon the recital of this grievance, of charges at-

* Upon the hearing and moving judgment in this case the Lord Chancellor was absent; the C. J. of England was present at the hearing.

tempted to be made upon the stipends, it is enacted, "that all ministers stipends in time coming be free "from all tacks, pensions, *taxations* and impo-"sitions."

The word "taxation" in the enacting clause is peculiar.

In the construction of acts of parliament as of all instruments, where general words are annexed to or follow particular words, they are taken to be of the same kind and meaning.

The words immediately following explain the sense in which the word "taxation" is used.

It is enacted that the clergy shall enjoy their stipends free from all tacks, &c. "notwithstanding any *gift or disposition* made to the contrary." This cannot be construed to allude to any public charge imposed by act of the legislature.

As to grants by the clergy in convocation, they could only bind the clergy who made the grants, not the portion allotted for stipends.

In *Grier* v. *Mitchell* *, there was some error in the verdict, and a *venire facias de novo* was ordered. The House of Lords thought it was a case of private right, and came under the reservation by the act of

* D. P. 27th April, 1814. The exemption claimed in this case was under an act of the Scottish Parliament, passed the 12th of July 1661, by which a coarse salt, worked and manufactured out of sea sand, by the poor inhabitants of Annandale, was exempted from the duties of excise. The proceeding was by information in the Court of Exchequer in Scotland, claiming a certain quantity of salt so made and seized as forfeited. The appellant claimed, and upon issue tried, a special verdict was given finding the facts. The Court of Exchequer, on argument, gave judgment for the respondents, and that judgment was reversed in the House of Lords.

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union. There was no finding of the law in that case. In this case, if the stipend is exempt by virtue of the act of 1593, yet the minister is liable in respect of the manse and glebe. So far, the warrant for seizure was legal, and sufficient to justify the proceedings. The finding of the jury distinguishes between the manse, glebe and stipend, and the assessed taxes, and the defender in this action could not be found guilty. But I desire to have time to look into the acts, and to consider the case.

7th April.

Lord Redesdale:—In a case of this description, where the decision affects a large body of persons, I was desirous to look minutely into the acts on which it depends.

It is immaterial to consider how the act of union might bear upon this subject. If the exemption claimed did not exist before that act, the provisions of that act cannot affect the question. The practice of not charging the stipendiary clergy of the church of Scotland, will not raise a right to exemption from charge.

What happened before the Reformation must be put out of consideration. Before the Reformation, the clergy, under the famous bull of Pope Boniface, claimed to be entirely exempt from all charges which they did not impose upon themselves. Pope Boniface carried the matter still farther, for he prohibited their imposing charges upon themselves without a licence from the pope. That prohibition was not much observed for some years before the Reformation, but it was the foundation of the exemptions claimed both in England and Scotland.

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After the Reformation, the whole character of the church was changed; for the exemptions which the clergy had before enjoyed, in respect of their spiritualities, upon that event ceased. At the time when episcopacy was restored in Scotland, the archbishops and bishops formed a part of the legislature of the country. They made to the king grants for themselves as in a separate state. The lords granted for their own body, including the freeholders, who were of the same estate as the titled lords; and the burgesses made a separate grant for themselves.

After the whole property of the church had been seized, two thirds were given back to the clergy, and one third was reserved by the Crown, out of which the stipends of ministers were to be provided. The revenue was charged upon the two thirds. It probably would have answered no purpose, in point of revenue, to have charged the remaining third, which was either in the Crown or applied in the payment of stipends.

It is impossible to apply the words of the statute, as contended for the plaintiff in error. The statute 1593, exempting stipends from taxation, does not relate to personal impositions on the clergy. There may be a doubt what particular taxation is intended.

It appears that stipends, issuing out of the third of the teinds, had been charged in various ways by acts of the Crown; that is the grievance which is to be prohibited in future; and all existing charges are annulled. The word "taxation," introduced in the midst of other words, cannot be extended in construction to all kinds of taxation. According to

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the ordinary rules of construction, it must be understood in the same sense as the words with which it is coupled. Taxation in that clause must mean something of the same kind with those other things which are expressly and specifically prohibited. If this act has not the effect of exempting the clergy of Scotland from taxation of stipend, no such exemption is to be found in any other statutes. That in other respects the clergy have not been charged where other persons have been charged, furnishes no reason to extend the exemption to this case. Nor is there any ground to contend, that the words of the act imposing the property-tax are not sufficient to extend to the stipends of the clergy. By that act "*teinds, stipends, annuities, and all profits whatsoever**, are made chargeable. The party has been properly charged under the three acts specified. There can be no doubt as to the personal duties, and as to the other charges, I think the judgment ought to be affirmed.

Judgment affirmed †.

* See the words of the act *ante*, note *, p. 556.

† This question, as to the claim of the clergy to be a privileged order, in different ages of the law has been viewed in different lights. In early times, the general doctrine was, that spiritual persons, in respect of their benefices, were not chargeable as the laity, by charges imposed on the realm generally. Their goods were exempt from purveyance, 2 Inst. 3. And by the common law of England every parson was held to be free from the payment of tolls in all fairs and markets for all goods, &c. gotten upon or bought to be spent on their church livings. 2 Inst. 3; Reg. 260 a. So they are quit of pavage, pontage and murage (which were duties of the most universal obligation), and if they be distrained for, &c. may have a writ, &c. 2 Inst. 4;

Reg. Brev. 260 a; F. N. B. 227. If the sheriff or collector of tenths or fifteenths distrained them in the lands belonging to their churches, they had a like writ to discharge them. Reg. Brev. 188 a; Fitz. N. B. 176 a.

Statutes expressed in general words, were not held to extend to the clergy, as the statute of Winton, 13 Ed. I.

Where a robbery was committed, and the hundred charged, though the words of the statute were *gentes demorantes* (all dwellers) yet the clergy were not held chargeable. See 2 Inst. 569; case of the Bishop of Coventry *semb. contra.* So the statute of highways, 2 & 3 Ph. and Mary, charges all householders, yet the clergy were held exempt. Again, the statute 33 Hen. 8. c. 2, empowers the justices to tax all "*resiants*" within the county where there is no gaol, &c. yet the clergy were formerly held not taxable. But in a case which occurred in the reign of Charles the Second, where a parson had brought an action of trespass against an officer who had taken his cows by way of distress under a warrant of a justice, and by authority of an act of the same reign, (22 Car. 2. c. 12.) requiring all *parishioners* keeping carts, &c. to assist in repairing the ways, it was held that he was a parishioner within the meaning of the act; and the court laid it down generally, that the clergy are liable *to all public charges imposed by act of parliament*; adding, that it had been so resolved (as Hale said) upon debate before all the Judges. So the case is reported by Ventris, 1 Vent. 273. According to the Reports of the same case by Keble, (3 Keb. 476. 507.) who states the trespass to have been by taking *horses*, and the plea in justification to have been under the 2 & 3 Phil. and Ma. c. 8. (which is enforced by 22 Car. 2. c. 12.) The words used by Hale were, "Parson is not exempt from any *new* "charge for *repairing highways*; and by Hyde, C. J. in his "Reports, P. 5. Ca. 1. there is no difference between clergy "and laity in assesse for poor maimed soldiers or *B. R.*: but the "dean and chapter and glebe must pay, and so resolved by all "the Judges of England then, and so agreed by all the Judges "now, being for constable rates and the like, and the parson of "*B.* &c. was convicted on this very stat. of Ph. and Ma. for not "sending his cart, about forty years since, and so the court con-"ceived here." Levinz, who states the trespass to have been in taking *beasts*, (2 Lev. 132.) gives the words as used by Hale and

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the court thus: "To *new* charges by statute, the lands of the "church are subject (as other lands) unless they are excepted. Upon the stat. 22 Hen. 8. c. 5, for the repair of decayed bridges, as to the words "tax every inhabitant," Lord Coke observes, "By these words all privileges of exemptions and discharges "whatsoever, from contribution, &c. are taken away, although "the exemption were by act of parliament." 2 Inst. p. 704.

By the 43d Eliz. c. 2, clergymen are made liable to the poor rates for their glebe and tithe.

By the General Highway Act, 13 Geo. III. c. 78, s. 34, 35. 45, 46, they are expressly made liable, in respect of their tithes, &c. The 57th Geo. III. c. 99, s. 62 & 65, provides, that stipendiary curates, where the stipend appointed by the bishop equals the whole value of the benefice, and the curate is empowered to live in the parsonage, he shall be liable to all the same charges, deductions, taxes, parochial rates and assessments, as if he held the benefice.

This seems to be one of those cases in which the law has undergone a silent revolution. The general exemption of the clergy from public impositions, is acknowledged by the expression and implication of many statutes and decisions. But the privilege has ceased, in many instances, without legislative enactment, by the unseen progressive legislation of manners and opinions. The reasons for exemption as to matters of public taxation, imposed by the legislature, have been, no doubt, seriously affected by the disuse of convocations, in which the clergy were accustomed to assess their own contributions to the public charge of the state. Now they are taxed without representation as a distinct order of persons, but certainly not without vote or influence in the election of representatives.