

# CASES

DECIDED IN THE HOUSE OF LORDS

ON APPEAL FROM THE

COURTS OF SCOTLAND,

1823.

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Rev. ROBERT SCOTT, Appellant.—*Jeffrey—H. Lumsden.*

No. 52.

CHARLES MACDONALD and Others, Respondents.

*Cessio.*—Circumstances under which it was held, ex parte, (affirming the judgment of the Court of Session,) that a clergyman, who was found entitled to the benefit of the cessio, was obliged to assign to his creditors £75 out of his stipend annually.

THE Rev. Mr. Scott, minister of the parish of Glenbucket in Aberdeenshire, having become insolvent, and been imprisoned, brought a process of cessio bonorum against his creditors. He stated that his stipend amounted only to £33:6:8, which could not be augmented by the Court of Teinds; that, in virtue of the 50th Geo. III. c. 84, it had been increased to £150; that he had a glebe of five acres of land; that his other funds amounted to about £600; and that his debts consisted of £2800, (which had been contracted as cautioner for a brother,) and £450 due by himself. He also stated that he had a wife and family,—that she was entitled to the liferent of £800, inclusive of his jus mariti,—and that, from the remote situation in which he was placed, many of the more essential necessaries of life were very expensive. His creditors did not oppose the cessio being granted, but contended that he was bound to assign to them a part of

March 5. 1823.

2D DIVISION.

March 5. 1823. his stipend, and of the allowance under the statute. To this he answered,—

1. That it had never hitherto been distinctly settled that the stipend of a clergyman was liable to be attached by diligence, and that, in point of principle, it was equally as much entitled to be preserved entire for his maintenance as the salaries of Judges, being like them strictly alimentary.

2. That supposing that any part could be attached, it was always a question of circumstances how much ought to be so, and that, in the very peculiar situation in which he stood, an extremely small portion ought to be allowed of that which was properly his stipend. And,—

3. That the provision made by the statute was distinguishable from the stipend, being granted purely for the aliment and subsistence of poor clergymen, and therefore could not, consistently with the purposes of the Legislature, be carried off by diligence.

The Court found him entitled to the benefit of the cessio, but that he was bound to assign to his creditors one half of the stipend of £150 payable to him. Against this interlocutor he reclaimed, and the Court, on the 18th of February 1817, so far varied the interlocutor ‘ as to direct that the pursuer, in his disposition ‘ omnium bonorum, shall, in due and regular form, assign to the ‘ creditors an annual sum of £75 sterling, in part of the stipend ‘ payable to him as minister of Glenbucket, for all future years ‘ during his incumbency, reserving to himself the remaining emoluments of his said office;’ and thereafter, on the motion of the creditors, ordained him to deliver receipts to their trustee of the part of the stipend and allowance so to be assigned by him, in order that they might be enabled to uplift the amount.\*

Against these interlocutors, so far as they ordained him to assign any part of his stipend, Mr. Scott appealed. No appearance was made, nor Case lodged for the creditors; but the House of Lords, after hearing his counsel, ‘ ordered and adjudged that ‘ the said petition and appeal be, and is hereby dismissed this ‘ House, and that the said interlocutors therein complained of be, ‘ and the same are hereby affirmed.’

*Appellant's Authorities.*—1. Fount. 46; 4. Connell, c. 5; 2. Bell, 626.

J. CHALMER,—Solicitor.

(*Ap. Ca. No. 2.*)

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\* See Fac. Coll. 11th March 1818, foot note, p. 505.