

STIPEND.

1611. November 7. THOMSON *against* VISCOUNT HADDINGTON.

AN erected Lord having presented a minister to one of his kirks, if he obtain not collation and institution, the Lord may not make payment to him of the stipend contained in his infestment; but the same will be accounted as an implanted minister's stipend, and pertain to any minister to whom the Platt shall assign it.

Fol. Dic. v. 2. p. 395. Haddington MS. No. 2292.

No. 1.

1622. December 20. MINISTER of CRAILING *against* KER.

The Minister of Crailing having assigned to him, by the Commissioners of Parliament, a constant stipend furth of the fruits of the said church, Sir John Ker, pretended patron, and heritor, and his successors and intromitters, charged Alexander Stewart and Sir John Preston, as having comprised Sir John Ker's right of the Abbacy of Jedburgh, whereof the kirk was a part, to pay to him his modified stipend. They suspended, alleging, That they had not intromitted by virtue of their comprising, but that Sir John Ker had spuilzied; to which action they were content to make the Minister assignee *pro tanto*. The Lords would not sustain the reason to put the poor minister to pursue Sir John Ker, who was a notour rebel; but found the letters orderly proceeded, notwithstanding that reason.

Fol. Dic. v. 2. p. 394. Haddington MS. No. 2710.

No. 2.
A compriser of a right to teinds, though never entering to possession, is liable to the Minister for his stipend.

* * Durie reports this case :

Sir John Preston having comprised Sir John Ker's heritable right of the teinds of Crailing, for debt owing to him by the said Sir John Ker, and being charged to pay the minister's stipend, wherewith the teinds were affected, suspended, on this reason, That he was not intromitter, and that he renounced his comprising of these teinds; which comprising, not being profitable to him, for his own satisfaction, could not bring any other burden upon him, there being other persons who intromitted with the teinds. The Lords found this reason noways relevant;

No. 2. but found, that Sir John Preston, having comprised, and been infeft, ought to pay the stipend, sicklike as Sir John Ker should have done, in whose right he succeeded; seeing, by his comprising, and right following thereon, he might have intromitted by law; and if he was debarred by any other who intromitted, he had, by virtue of his rights, a competent action of spuilzie against the intromitters.

Act. Lawtie.

Clerk, Scot.

Durie, p. 40.

1623. June 20. JOHN BALFOUR *against* GILBERT KER of Lochtour.

No. 3.

Every intromitter of teinds is liable for the stipend to the extent of the whole quantity of his intromission.

Mr. John Balfour, Minister at Hettam, charged Gilbert Ker of Lochtour as intromitter with some of the teinds of the parish, who were decerned to pay the constant stipend, and had obtained prorogation of their tacks; and if the suspender had any intromission, it was by a wadset of his teinds, redeemable for 5000 merks; and that his intromission would not equal his annual-rent, besides that his wadset before the decret of the Commissioners of Parliament. The Minister answered, That, by his decret, all the teinds of the parish, and all the intromitters therewith, were subject to his payment, and he had place to charge any intromitter. I reasoned, That the minister had his direct action against the principal tacksman, who was *nominatim* decerned to pay him; and that it was lawful to him to set tacks for small duties, which the minister could not quarrel, so long as the principal tacksman paid him; and that the Minister should first have discussed the principal tacksman, before he charged any intromitter, specially having intromitted by a lawful right made to them who had power, by virtue whereof he had been in possession divers years. It was farther eiked by the suspender, That he should be charged only *pro rata*, according to the proportion of his intromission, and the rest of the parish for their intromission; which was also repelled, and the minister's reply sustained, bearing, that Lochtour had intromitted with as much as might pay his stipend, and that Lochtour might have his relief against the rest. I affirmed, that he had no relief but against the granter of the wadset, who was a dyvour, and that many others of the parish might perchance have intromitted without title, against whom he had no action, they not being bound to him, and he not having right to the tack of their teinds, nor any assignation from the principal tacksman. Notwithstanding whereof, the Lords found him debtor *in solidum* for the whole quantity of his intromission.

Fel. Dic. v. 2. p. 394. Haddington MS. N. 2863.

1625. July 6. MORTON *against* SCOT of Harden.

No. 4.

Stipend is a burden upon the teind, and

In a suspension betwixt Mr. Robert Morton, minister at Etrick, and Sir William Scot of Harden, who was charged by the Minister to pay the stipend modified to