

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

the Minister, by decret of Platt, *anno* 1617, in respect that Scot of Thirlston, who had right to the whole teind, out of which the stipend should be paid, and who was subject thereby in payment thereof, had disponed a part of the teinds to Harden, the suspender, and who, by virtue of that alienation, intromitted with the teinds disponed, and consequently who was, and became obliged to the Minister; the Lords found the Minister had good right to seek complete payment of his whole stipend from Harden; albeit that Harden alleged, That he ought to be found debtor in no further part of the stipend, but according to the proportion of so much of the teinds of the parish as was disponed to him by Thirlston, and bruiked by the suspender, which extended not to the tenth part of the teinds; and that Thirlston should be subject to pay the rest, who remained in the right and possession of the whole rest; for it were against equity, as he alleged, that he should pay all, who had so small a part of the teinds, and that the rest of the teinds should bear no burden; which allegiance and reason was repelled, and Harden found debtor to the Minister in the whole, reserving to him his relief *pro rata* against the possessors of the rest of the teinds of the parish; but it was found necessary to be proved, that Harden's right and intromission with the teinds extended to as great a quantity as would satisfy the whole stipend addebted to the Minister; which being proved, the charge was sustained against him at the Minister's instance, for the whole stipend.

Alt. Scot.

Fol. Dic. v. 2. p. 393. Durie, p. 174.

No. 4.
a minister may
betake himself
to any of the
heritors, in so
far as he has
teind, without
prejudice to
that heritor's
relief against
the others.

1627. July 4. M'KENZIE against PARISHIONERS of SCLAIT.

In an action of letters conform, at the instance of ——— M'Kenzie, minister of Sclait, against the Parishioners thereof, the Lords found, That a gift presenting, and, in the same presentation, admitting the Minister to the kirk, the same being a benefice at the Bishop of the Isles' presentation, was sufficient thereon to seek letters conform; and that there needed no other several collation nor institution, the benefice being given by the Bishop of the diocess, who was patron, and conferred by him, by his gift, to the Minister *pleno jure*: And because there compared another Minister, who alleged, that, upon another gift, granted to him by the same Bishop, of the same benefice, he had obtained letters conform, in his favour, so that no other sentence could be granted to another, this allegiance was repelled, in respect this pursuer replied, that he was actual Minister, and served presently the cure at the kirk, and had done the same these 18 years; which being proved, the Lords preferred him, notwithstanding of the other sentence of letters conform.

Act. Foulis.

Clerk, Gibson.

Durie, p. 303.

No. 5.