

the pursuer replied, that the beneficed person had only place to quarrel his right, and that not summarily, but by pursuit of reduction, seeing it was clothed with possession; in the which action he might then qualify, (which is not proper to be done here) that there is no diminution of the rental; and where he would dispute, that the rental is not to be considered, according to the avail and rent of the benefice, as it may yearly yield, but according to a constant recorded rental in writ, given up and authorised for a rental; likeas he would then allege great difference betwixt pensions flowing from a stipendiary minister or titular, and a beneficed person, having patron and chapter consenting to his deed, and which is *ecclesia collegiata, habens capitulum et præbendam cum dignitate*; but this was not decided as said is.

Durie, p. 574.

No 9.

1662. July.

CLAPERTON against LADY EDNEM.

UMQUHILE John Edmiston of Ednem gives a pension to Jean Stirling of two bolls wheat and ten bolls oats, payable yearly out of the mains of Ednem, whereunto George Claperton her son being assignee, pursues the Lady Ednem and the tenants for payment, from crop 1647 to 1661 inclusive. It was *alleged* for the Lady, She stands infeft in the mains, and by virtue of her infeftment, in possession, continually since the death of her husband: And the pension is no real right, especially being granted by a laick, and whereupon never any decreet followed against the tenants. It was *answered*, That the pension was clad with possession by payment made by her husband in his time, and by the defender herself for the year 1647. It was *replied*, That the pension is but a personal obligation by which the defunct did oblige him and his heirs to pay the same out of his rents of the mains; which personal obligation cannot carry a real right as an infeftment; and any payment made by the defunct was only for fulfilling his personal obligation: Likeas, the payment made by the defender was as executrix, for fulfilling her husband's obligation, out of his moveables, which cannot be a ground to affect the rents therefore.

THE LORDS found the allegiance and reply relevant.

Fol. Dic. v. 2. p. 55. Gilmour, No 52. p. 37.

* * * Stair reports the same case:

1662. December 11.—IN anno 1621, umquhile Sir John Edmiston of Ednem granted a bond of provision to Jean Stirling of two bolls of victual, which he obliged himself to pay to her out of the mains of Ednem, or any other of his lands, by virtue thereof she was in possession, out of the mains of Ednem, till the year 1640. Andrew Claperton her son and assignee pursues the Lady Ed-

No 10.

A pension of victual out of lands, made by a laick, was found no real right, but a personal obligation, not binding upon singular successors.

No 10.

nem, as intromitter with the rents of the mains of Ednem, to pay the pension since. The defender *alleged*, Absolvitor, because she stands infeft in the mains of Ednem, by virtue of her liferent, and thereupon has possessed; and the pursuer's pension is merely personal, and does not affect the ground, nor is valid against singular successors, and though conceived in the best way, can have no more effect than an assignation to mails and duties, which operates nothing against singular successors, unless it had been an ecclesiastical pension, clothed with possession, having letters conform, which only is valid against singular successors.

THE LORDS found the defence relevant.

Stair, v. 1. p. 148.

If a pension falls by failure of the cause for which it was granted.—See IMPLIED CONDITION.

A pensioner dying, what interest his executors have.—See TERM LEGAL AND CONVENTIONAL.

See APPENDIX.