

tion, and no locality, the Earl alleged locality should be first made, and he liable but for his proportional part of the stipend. No. 10.

The Lords found, That the stipend affected the teinds, and the Minister might take himself to any of the heritors, in so far as he had teind; and therefore sustained the condescence, and ordained the charger to prove what teind my Lord had, without prejudice to him to crave his relief.

*Fol. Dic. v. 2. p. 393. Stair, v. 1. p. 235.*

\* \* \* Newbyth reports this case :

Mr. James Hutcheson, Minister at Inch, having charged the Earl of Cassillis for payment making to him of 500 merks, and 3 chalders of victual, for his stipend 1663, conform to his decret of modification, he suspends, upon this reason, That he being but one of the heritors within the parish, and there being more heritors than him contained within the decret of modification, so that, until there were a locality produced, whereby every one's proportion might be known, the Earl could not be charged for the whole : The Lords found the Minister might charge any of the heritors for payment of his stipend; albeit he had no decret of locality, especially the Earl of Cassillis, since he offered to prove, that he had more teinds in the parish than would satisfy the modified stipend, and that the Earl might seek his relief against the rest of the heritors.

*Newbyth MS. p. 8.*

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1676. February 8. COLLEGE OF ABERDEEN against \_\_\_\_\_.

No. 11.

The College of Aberdeen, having right, by act of Parliament, to the vacant stipends within the bounds therein mentioned, pursues for a vacant stipend. The Bishop of Ross compeared, and alleged, That the kirk was his mensal kirk, so that there could be no vacant stipend.

The Lords found, That the College should have right to any stipend that belonged to the former Ministers, either modified to them, or of which they had been in possession; and that it was consistent, that the kirk should be mensal, and yet the Minister should have a stipend, and that the pursuers should have right thereto, being vacant.

Reporter, *Craigie.*

*Dirleton, No. 325. p. 157.*

\* \* \* Gosford reports this case :

The collector pursuing the heritors for the vacant stipends since the death of the Minister, it was alleged, That, by the act of Parliament, he had no right, because the said kirk was a mensal kirk of the bishopric of Ross, and so belonged

No. 11. to the Bishop; whereas the act of Parliament did only comprehend vacant kirks, which, by the death of the incumbents, had no titular. It was replied, That albeit it was a mensal kirk, yet being provided with a constant local stipend, the same, by the death of the incumbent, could not fall to the Bishop, who had only a right of collation, and so, being a vacant stipend, fell within the act of Parliament. The Lords did sustain the action, and found, That the stipend, being so settled by a decret of Platt, by the death of the last incumbent, it ought to be applied for pious purposes.

*Gosford, No. 849. p. 537.*

1676. December 12.

COLLEGE of GLASGOW *against* PARISHIONERS of JEDBURGH.

No. 12.

The Lords found, That a presentation of an actual Minister before the term, was not a complete right to the stipend, unless there had been a warrant for his transportation.

Reporter, *Thesaurer-depute.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 395. Dirleton, No. 398. p. 195.*

\* \* Stair reports this case :

The College of Glasgow pursues the heritors of the parish of Jedburgh, for the vacant stipends of the term of ———, who alleged absolutor, because they had made payment *bona fide* to the incumbent, who was presented before that term, and begun to preach, and got collation and institution shortly after; and the Lords are always in use to draw back collations and institutions to the time that the person instituted begins to officiate by preaching. It was answered, That there is no legal title in any incumbent by presentation only, but by collation and institution; before which it cannot be said the benefice is full, and that it is not a like case, when an expectant is admitted to trials, and preaches; by which he is necessarily hindered to get collation and institution till his trial end; and in the case in question, where an actual Minister was transported from one church to another, who did preach only once or twice before the term in question, the parishioners might know, at the serving of his edict, if they had any ground to object, and who received the stipend, for that term, of the Church from which he was transported.

The Lords repelled the defence in respect of the reply, unless it were alleged that the incumbent had received collation before the term; but would not burden him to prove institution, which is frequently omitted in this Church.

*Stair, v. 2. p. 476.*