

Soon after the decision in this appeal, an act of parliament was passed, 10 Ann. c. 7. intituled, "An act to prevent the disturbing those of the episcopal communion in Scotland."

Preface to
the History
of the
Union, p. 19
et seq.

It is stated by Defoe, that the preaching of Mr. Greenshields excited much disturbance in Scotland, and alarm for the safety of the established church. Addresses were presented to the general assembly from Edinburgh and from Haddington; and similar addresses were preparing almost all over the kingdom, when the proceedings were commenced against Mr. Greenshields.

Case 7. James Durham of Largo Esq. - - Appellant;
Robert Lundine Esq. of Lundine, Alexander
Watson of Aithernie, Andrew Lundine of
Straitherlie, and John Lundine of Baldaster, Respondents.

20th March 1710-11.

Appeal.—An appeal competent, from a decret in 1698, and interlocutor in 1708, though objection made that a decret in 1707, confirming that in 1698, was not appealed from.

Teinds.—Prorogations of tacks of teinds, where an augmentation of stipend was small, reduced from six 19 years to one 19 years.

THE appellant was patron of the parish of Largo. In 1698, the then minister of Largo, during the appellant's minority, obtained decret of the *commissioners for plantation of Kirks and valuation of Teinds*, for an augmentation to his stipend of about 14*l.* per annum, which was allocated upon the teinds of several heritors of the parish:—And in consideration of this augmentation, the commissioners granted to the respondents, who were tacksmen of teinds in the parish, prorogations of their tacks for six 19 years, to commence after expiration of their current tacks, which had then eight years to run. This decret mentioned the shares of the whole stipend to be paid by the proprietors of lands in the parish, part being to be paid out of the teinds of lands belonging to the appellant.

In 1707 the appellant obtained a decret of the Lords of Session against the respondents, by which their old tacks were declared to have expired in 1706, yet the decret of the commissioners in 1698, for prolonging their respective terms, was thereby confirmed.

In 1708 the appellant brought an action before the Lords of Session, as commissioners for plantation of Kirks and valuation of teinds, for reduction of the said decret of 1698, on the grounds that it had been obtained during his minority, that no part of the stipend ought to have been allocated upon his teinds, and that the prorogations granted to the tacksmen were altogether disproportionate to the augmented stipend charged upon their teinds.

The

The Lords Commissioners, on the 23d of June 1708, “ found
 “ and declared, that the appellant was not prejudiced by his not
 “ claiming that his own lands ought to have been exempted from
 “ paying his proportion of the minister’s stipend; and therefore
 “ refused to relieve the appellant from the said decree of the
 “ Commissioners for planting of Kirks in 1698, and dismissed his
 “ action.”—The appellant reclaimed, and the commissioners, on
 a rehearing of the cause in July 1708, adhered to their former
 interlocutor.

The appeal was brought from “ a decree or sentence of the
 “ Lords of Council and Session, pronounced the 23d day of June
 “ 1708, and a rehearing thereof in July following, whereby they
 “ have affirmed the prolongations, granted by the Commissioners
 “ for plantation of Churches, to the respondents, of their respec-
 “ tive tithes within the parish of Largo.”

Entered
 2 January
 1710-11.

Heads of the Appellant’s Argument.

By an act of the Scots parliament, 1693, c. 25. it is expressly
 provided, that the teinds of the lands belonging in property to
 the patron should be freed from paying any part of the mainte-
 nance of the minister, but that the same should be laid propor-
 tionally upon the teinds of the respective proprietors of the parish.
 From this, it appears, that the decret of 1698, appealed from,
 whereby the appellant’s own lands were burthened with a con-
 siderable part of the minister’s maintenance, is expressly contrary
 to the said act of parliament; and he ought to have been relieved
 against his decret, which was pronounced during his minority.

1693, c. 25.

Though by the act 1690, c. 23. the patron’s right to the teinds
 is burthened with the tacks then subsisting, or prolongations there-
 of to be made, yet that only hinders the patron from making any
 greater demand upon tacksmen, while their tacks are current,
 than the tack duties therein contained; and does not preclude,
 but that after expiration of these tacks, the patron shall be en-
 titled to have his own lands exempted, and to have the share of
 the stipend formerly paid by him laid proportionally on the re-
 spective proprietors of lands in the parish, who in recompence
 have prolongations made of their tacks.

1690, c. 23.

The said act 1690, c. 23. expressly imports that all prolonga-
 tions to be granted of tacks of teinds shall be *effeiring* to the
 augmentation granted. But in the present case no such propor-
 tion has been observed; for the augmentation is only about 14*l.*
per annum, and the teinds of the parish, exclusive of those of the
 appellant’s own lands, over and above paying the whole stipend
 to the minister, are worth about 100*l.* *per annum*.

Heads of the Argument of the Respondent Robert Lundine (a).

This appeal is not regularly brought; for the decree which the
 appellant obtained in 1707, declaring the old leases to be expired,
 but ratifying the decree of 1698, is not appealed from by him.

(a) No other respondent’s case has been found.

And therefore though the decree of 1708 should be reversed, that of 1707 must still subsist.

In 1633, Patrick Black, then patron of the parish of Largo, (to whom the appellant is singular successor in this patronage and estate of Largo,) having right to the whole teinds of the parish by a tack from the then parson, did, for an onerous consideration, sell and dispone to the respondent's ancestor, not only all his then interest in the teinds of the estate of Lundine, by virtue of the tack granted to him or otherwise, but also all such future right and title to the said teinds as he the said Patrick Black, his heirs or successors, should or might claim or acquire, so far as concerned the lands and barony of Lundine. And he thereby obliged himself, his heirs and successors, patrons of the said church and parish of Largo, to do all further acts for establishing heritably, or otherwise, the right of the teinds of the lands and barony of Lundine, in property to the respondent's ancestor, his heirs and successors, he and they indemnifying the said Patrick Black, his heirs and successors, from the minister's stipends laid or to be laid on the lands of Lundine: and Patrick Black then agreed to take a proportional share with the respondent, and other heritors, of the minister's stipend upon his own lands.—When the appellant's ancestor, therefore, purchased the said estate and patronage of Largo, he took it with such share of the minister's stipend charged thereon, and had an allowance for the same in his purchase. The right of the respondent's ancestor to the teinds of his own estate, is by the same acts of parliament whereon the appellant founds his right expressly excepted and reserved to him by these words, "*not heritably disposed.*"—Thus the same accidental interest, which was by that act given to patrons, did as to the teinds of his own estate accrue to the respondent; and in this respect the appellant's case is quite different from that of other patrons and heritors.

By the decret of 1698, the appellant's estate is not charged with any part of the augmented stipend, it only charges him with part of the old stipend, which Patrick Black, his predecessor, took upon himself, and which was deducted in the purchase by the appellant's ancestor.

The same act of parliament which gave to patrons the right to teinds "*not heritably disposed,*" did it with the burthen of augmentations to the stipends of ministers, and of tacks and prolongations thereof to heritors: and the prolongation to the respondent granted in the decret of 1698, is warranted by all the acts appointing Commissioners for plantation of Kirks, &c., who are thereby empowered to grant such prolongations, without any restriction as to the length of the then current tacks, or for what terms they should be prolonged.

After hearing counsel, *It is ordered and adjudged, that the decree or sentence complained of in the said appeal made in the year 1698 by the Commissioners for the plantation of Churches for prolongation of the leases therein mentioned for six 19 years, and the decree or sentence made in the year 1708, by the Lords of Council and Session in North Britain*

Britain in affirmance of the former decree or sentence as to the prolongation of the said leases be reversed, so far as the same relates to the prolongation of the said leases, except only as to the first nineteen years of the six 19 years.

For Appellant, *Jo. Pringle.*
 For Respondents, *Sam. Dodd.*

Sir Andrew Kennedy, Baronet, - - *Appellant;*
 Sir Alexander Cuming, Baronet, - - *Respondent.*

Case 8.
 Fountain-
 hall, 3d Jan.
 1706.
 19 March,
 19 Nov.
 9 Dec. 1707.
 16 Jan.
 24 Feb.
 9 Dec. 1708.
 5 Feb. 1709.
 Forbes,
 3 Jan. 1706.
 18 March,
 19 Nov.
 1707. 16
 Jan. 1708.

19th April 1711.

Public Officer.—The office of conservator, held by a grant under the great seal to a father and his son jointly, being upon complaint of the father's malversations granted to a third person, without previous sentence; this new grant was void.

Certain malversations alleged against the conservator not relevant to infer deprivation.

Proof.—The malversations of a conservator being found proved *per singulares testes*, the judgment is reversed.

Act of indemnity.—Malversation thereby remitted.

Expences of the court below given to *an appellant*.

Proceedings on the mode of ascertaining the amount of these expences.

THE office of Conservator of the Scots Privileges in the Netherlands is very antient; it was held by grant under the great seal of Scotland: to it several powers and faculties were committed in relation to trade, treaties with foreign states, and other matters that concerned the government and public peace.

By many ancient treaties, and by a contract made between the royal burghs of Scotland, with the approbation of his Majesty King William, on the one part, and the states of Zealand and town of Campvere on the other part, in 1699, and by an act of the parliament of Scotland, Campvere was appointed the port where all staple goods, such as linens, woollens, hides, butter, oil, tallow, pork, beef, salmon, lead ore, &c. of the manufacture, growth, and produce of Scotland were to be landed. By this contract the Scots had many privileges and advantages.

For the better maintaining these privileges, and that the conservator might have more ready access to the states and their senates abroad, he was vested with the character of a public minister, as resident for the whole provinces; and had jurisdiction over Scotsmen both civil and criminal. By several acts of parliament he was obliged to keep courts, and administer justice according to the laws of Scotland, and those who sued before any other judicature were punishable: where differences arose between the Scots and Dutch, the conservator was to appoint arbitrators; and if they made no determination, he was to sit and judge with Dutch magistrates.

1503, c. 81.
 1579, c. 96.