

No 1.

the minister could not have the 40 merks for the communion elements, because he had not given the communion. The charger *answered*, That it was *jus tertii*, and that he was willing that the sum charged for the elements should be put in the parish box.

THE LORDS found the letters orderly proceeded, and ordained the same should be put in the parish box according to the charger's offer. See TEINDS.

Fol. Dic. v. 1. p. 155. Stair, v. 2. p. 649.

* * * Fountainhall reports the same case :

THE LORDS decerned for the communion elements, though he had not given it; but the minister offered to put it in the poor's box: As also decerned for some teind-sheaves, since that was the vicar's modification where grass rouns are turned to cash. *Item*, they decerned for 2s. 6d. *per annum*, furth of every weaver's loom; and for the salt, though these were *decimæ industriales*; in respect of 40 years possession, which at least is required where teinds are only due locally, and *per consuetudinem*; but, in the usual teindable species, such as lamb-wool, &c. *triennalis et decennalis possessio* is sufficient; which difference is observable.

Fountainhall, MS.

1713. July 21.

The HERITORS of the Parish of Abdie *against* MR JOHN CORSAN minister there.

No 2.
Found, that the yearly modification for the communion elements cannot, when the sacrament is not administered, be diverted to the benefit of the minister, but ought to be applied to the poor's use.

MR JOHN CORSAN having ten bolls of victual yearly, modified in his decret of locality, for defraying the expense of the communion elements; the heritors of his parish pursued him for repetition of these modified bolls, as *indebite* paid to him, for all years wherein the sacrament was not administered by him, to the end the same might be given to the poor, or applied to other pious uses within the parish. Because the act 54th Parl. 3d, James VI. ordaining persons (i. e. the parishioners), of all parish kirks to furnish bread and wine to the communion, how oft the same shall be ministered there, implies, That they are liable to that charge only when the sacrament is ministered: And those who are of opinion, that the heritors are liable yearly, hold, that the sum modified, when the sacrament is not administered, should be given to the poor, and not to the minister, Mackenzie's Obs. on the said act, Forbes' Treatise of Church Lands and Tithes, p. 428, and a minister obtained decret for payment of the sum modified for communion elements, upon his offer to put it in the poor's box, November 29th 1678, Birnie against the Earl of Nithsdale, (No 1. p. 2489.): Which offer was made, because he knew the Lords would oblige him to it.

THE LORDS found, That the yearly modification for the communion elements, cannot, when the sacrament is not administered, be diverted to the benefit of the minister, but ought to be applied to the use of the poor. Albeit it was *alleged* for the defender, That he had the same right to the modification for communion elements, as to any other part of his stipend. And as there is no positive law determining that manner of application; so there hath been no decision, save one, proceeding on the minister's consent, which ought not to be a rule against those who do not consent. Besides, the minister is the most competent judge when it is fit to administer the sacrament, within the parish under his cure; and is only censurable for remissness or negligence therein, by the ecclesiastical judicatures.

No 2.

Thereafter, July 28th 1713, the defender craved by a bill, *imo*, That the application of the modification, for communion elements to the use of the poor when the sacrament is not administered, might be made a rule to take effect only in time coming; and that the LORDS would assoilzie him from repetition of bygones, seeing it would lay a precedent for innumerable vexatious pleas, not only against ministers *in pari casu*, but even against the widows and orphans of such as are dead: *2do*, That the LORDS would find the *jus exigendi* of these modifications for the poor's use, to be in the kirk session, accountable for the due administration thereof to the Justices of Peace, or other judges competent.

THE LORDS refused the desire of the petition.

Fol. Dic. v. 1. p. 155. Forbes, p. 704.

1742. June 10.

HERITORS of the Parish of Strathmiglo *against* MR GEORGE GILLESPIE
Minister there.

SOME of the heritors of the said parish brought a process against Mr Gillespie, before the sheriff of Fife, libelling, That he had neglected to administrate the sacrament for several years; notwithstanding whereof, he yearly uplifted for his own use the sum modified for communion elements, by his decret of locality, thereby depriving the poor of the parish of the sum of —, justly appertaining to them by the laws or this kingdom: Therefore concluding, &c. The Sheriff pronounced the following interlocutor: 'Having considered this process, with the defences and answers thereto, ordains the defender to produce a signed condescendence of the time of his admission as minister of Strathmiglo, and of the years he has administered the sacrament since that time.' Whereupon he offered a bill of advocacy. See 29th November 1678, Birnie, No 1. p. 2489.; 21st July 1713, Heritors of the parish of Abdie, No 2. p. 2490.

THE LORDS refused to advocate the cause.

No 3.

Heritors having claimed repetition from a minister of the sum modified for communion elements, on account of neglect to administer the sacrament, were allowed to condescend on the years he had administered the sacrament.

C. Home, No 191. p. 320.