granter of this discharge, to make these annualrents effectual to Alexander Ross, and of consequence to Mr Elphingston his disponee; but it is an uncontroverted principle, that an obligation to grant a disposition is virtually a disposition; and, therefore, though Mr Elphingston has no direct positive disposition to the annualrents, he has what the law reckons equivalent thereto. To answer the examples produced on the other side: As to the *first*, A person interdicted cannot dispone the rents of his lands without his interdictors; he may indeed discharge bygone rests, or assign them from term to term; for then they are considered as a moveable subject, which interdictions do not touch; and accordingly these will remain with the disponee, though the disposition be voided *ex capite interdictionis*; as would also the whole rents during the life of the interdicted person, if it were not, that a disposition to rents in time to come, is an heritable subject, falling under interdiction; so that this example turns strongly against its maker. As to the other examples, they do not apply to the present case. It is indeed true, that a disposition by one under prohibitory and irritant clauses, will neither convey the lands nor the rents; but the reason is, because the disposition irritates the disponer's own right; and consequently any pretence of right in the disponee. But suppose one to be possessed of an estate, not under irritancies, but under an obligation not to alter a certain order of succession, notwithstanding whereof, he gratuitously dispones to a third party; if the next heir of the investiture raise a reduction, he will not prevail further than he is lesed; but, *ita est*, he suffers no prejudice by the disposition during the disponer's life, which therefore, for the rents during his life, would subsist to the acquirer. And it would be absurd to pretend, that the heir prevailing in his reduction, the rents would fall back to the disponer; and yet this is precisely the case in hand. No 1.

The Lords found, that supposing the father's destination did disable his sons to discharge the mutual substitutions, as to the fee of the sums disponed to them by the father; yet found the conveyance made by Alexander to Lady Balmerino and Mr Elphingston, by virtue of the mutual contract, is effectual for the annualrents of these sums bygone, and in time coming, during James's lifetime.

Fol. Dic. v. 1. *p.* 441. *Rem. Dec. v.* 1. *No* 24. *p.* 53.

1747. *November* 10.

Mr John Foulis *against* The Vestry of the Chapel at the foot of Black-friars Wynd, Edinburgh.

No 2.
The founder of an episcopal chapel gave the vestry power to chuse.

The late Lord Chief Baron Smith founded a chapel at the foot of Black-friars wynd, for the celebration of divine service, according to the liturgy of the Church of England, providing, 'That no minister should be capable of officiating in the said chapel who was not qualified, by taking the oaths to the

No 2.
ministers, as often as there should be a vacancy, by death or a just cause. They were found to have a discretionary power of removing for a just cause.

'government, and who should not expressly by name pray for his [then] pre-'sent Majesty King George, and those who should succeed him to the Crown 'of Great Britain in the protestant line, according to the acts of Parliament 'relative thereto.' He also committed the management of the affairs of the chapel to a select Vestry, whom he named, to be continued, on failure of any of the members, by election by the remainder out of the congregation, and after his own decease, 'the power of nominating the ministers to officiate in the 'in the said chapel, when any vacancy should happen, either by death, or 'removal for just cause;' which power he reserved to himself during his own life.

Mr John Foulis was chosen second minister, and officiated as such without offence, till Sunday the 22d of September 1745, being that immediately after the rebels got possession of Edinburgh, when he celebrated divine service in the forenoon without expressly naming the King, after which he never officiated; whereupon the Vestry, by their minute 23d January 1745-6, dismissed him; for that, since the rebels left the place, he had not been heard of, though frequent enquiry had been made after him; and they being also informed of his officiating without praying for the King, directed their treasurer to signify it to him, and annex his answer to the minute, which he did, by a letter 21st February, certifying him, that if he did not clear himself of the accusation, it would be taken for granted, and made part of the minute of his dismission.

Mr Foulis pursued for his salary in time coming, alleging what he had done was out of sudden fear on seeing many strangers in the chapel; and that, as soon as he heard his colleague, the other minister, had returned, he resolved to go to the chapel and perform his duty, having till then, from the time of the rebels' leaving the place, been hindered by sickness; but, in the mean time, he received a message by the beadle, that he had orders from the vestry to refuse him access to the reading desk or pulpit: That, after this message, he abstained from the house till he should get an opportunity of clearing matters with the vestry, before which happened he received the account of his dismission; and, at advising, on bill and answers, he offered to prove his sickness, but not having notified it to the vestry, who alleged they had inquired frequently after him, it was neglected.

THE LORD ORDINARY 'having considered the deed founding the said chapel, found, that, by conception of the said deed, the office of minister in the said chapel was for life, or till removal for a just cause; and found the facts alleged against the pursuer not sufficient cause for removing him from his office.'

THE LORDS were generally of opinion, that the vestry could not arbitrarily remove their minister; but, on the other hand, that they were not under a necessity, if a just cause occurred, of having recourse to a Court, but could judge in the first instance, as the chapel was subject to no ecclesiastical superior; that there was lodged in them a discretionary power, whereby they were not tied up to condescend on such causes as would be sustained in a court of

justice, but it was said they might proceed, though there were neither a legal crime, nor a legal proof, if there were a sufficient cause of offence; that Mr Foulis's fault, contrary to the express foundation, joined with his absence after removal of the rebels, and not giving notice to the vestry, which had an appearance of waiting for the issue, before he declared himself, was a sufficient ground of removal. No 2.

They found, 10th November, 'the vestry, in removing the pursuer, had not acted arbitrarily, but agreeably to the discretionary powers given them by the founder.'

Pleaded in a reclaiming bill, That a vestry had no power of censuring or removing their minister, and that no such power was committed to this vestry by their founder, as neither had he reserved any such to himself during his life; that the vestry had settled their former minister during pleasure, because they then had Mr Foulis in their view, who could not immediately accept of the charge, but there was no such clause in the nomination of him, which was therefore plainly intended for life; that his failure of praying for the King one day, occasioned by fear, could not be considered in this cause, as it was none of the reasons whereon the vestry proceeded, but as it appeared by their minutes they had no evidence before them of the fact, and pronounced their sentence abstracting from it; that the reason given by them, of his concealing himself so that he could not be found, was not true, for the beadle found him, and delivered the message, discharging him from the exercise of his office, which he was ready to have entered upon, having recovered his health, as soon as his colleague, who had gone to England.

Observed; That Mr Foulis, by his own pleading, was on the place, and neither offered to exercise his office, nor gave any intimation of his want of health to any of the congregation, from the time the rebels left Edinburgh, to the beginning of January.

THE LORDS refused and adhered.

Act. *Lockhart, H. Home, & A. Pringle.* Alt. *W. Grant.* Clerk, *Gibson.*
Fol. Dic. v. 3. *p.* 307. *D. Falconer, v.* 1. *No* 208. *p.* 287.

1748. *July* 6. GORDON of Buckie *against* ANDERSONS.

No 3.
Payment made to an adjudger in trust on his bills, cannot be imputed to his trusters.

HELEN, ELIZABETH, and CLEMENTINA ANDERSONS being creditors of their brother Alexander Anderson of Arradoul, assigned their debts to Sir William Gordon of Park 'in trust, for their own proper use and behoof, to the end that 'he might lead such legal diligence, by adjudication or otherwise, as should be 'thought necessary for affecting the lands, &c. surrogating him in trust, for 'the use and behoof above-written, with power to prosecute and pursue all 'liable in payment of the sums of money assigned, decreets of constitution and