

Indeed, the general bent of the law, as it presently stands, and as it has stood in this country for some time past, is against personal services, whether in the case of kirk-lands or others. By an act, 1st Geo. I. C. 24. personal services of all vassals, even in temporal lands, were discharged to be performed in kind; and, by the act Geo. II. tenants were relieved from the general clause of services, used and wont.

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Observed on the bench: The act 1690 cannot be understood so favourably for the patron, as the defender argues. It is a beneficial statute to the patron, but with an exception that goes to the right that is granted; and, therefore, how can the patron get what is specially excepted from the right, especially where the benefice has been so long in possession? And the exception is broad enough to comprehend the whole, both feu-duty and services.

“The Lords repel the defences, and find the defender liable to the pursuer for the feu-duty of £.4 Scots yearly, from the year 1756; likewise for the sum of £.6 Scots yearly, as the value of the personal services libelled from the said year 1756; and find him liable for the said feu-duty of £.4 Scots yearly, and in the performance of the said personal services themselves yearly, in time coming; and find expenses due to the pursuer.”

Act. *Ogilvie.* Alt. *Hay Campbell.* Reporter, *Coalston.* Clerk, *Kirkpatrick.*

Fol. Dic. v. 4. p. 299. Fac. Coll. No. 78. p. 190.

1774. July 13.

THOMAS FOTHERINGHAM-OGILVIE of Powrie, *against* ALEXANDER BOWER, and Others, Heritors of the Parish of Methie.

The parishes of Methie and Inverarity, in the county of Forfar, were united, *quoad omnia*, by proper authority, above a century ago, and have ever since had only one church and one Minister.

The patronage of Inverarity belongs to Mr. Fotheringham of Powrie, who has also a separate right to the teinds of his whole lands, which compose the old parish of Inverarity, by charters from the Crown.

The kirk and teinds of Methie anciently belonged to the Abbacy of Cupar, and came to the Lord Cupar, as Lord of Ereccion of that Abbacy. Mr. Bower and others are heritors of the parish of Methie, and possess their teinds in virtue of tacks flowing from the Abbacy of Cupar, which, since the Reformation, were confirmed by Lord Cupar, the Lord of Ereccion, and prorogated by the commissioners, having powers for that purpose.

Powrie is also proprietor of some lands in the parish of Methie, to the teinds of the parish of which he has no right.

A process of augmentation, modification, and locality, was lately brought by the present Minister of these united parishes. After some procedure, a decree of aug-

No. 27.

After two parishes have been long united, Whether they are to be considered as one in localling an augmented stipend?

No. 27. mentation was pronounced by the Court. Nothing remained but to have that augmentation duly localled upon the heritors.

The parties above named offered two opposite schemes of locality; and Mr. Bower, &c. in support of their scheme, founded upon a decree given by the Court, in a similar case, in the year 1718, Maxwell of Tinwall against the Officers of State, Charteris of Amisfield, &c. (not reported) as a determined point in their favour. See APPENDIX.

The Court having had an extract from the teind-record of the case of Tinwall laid before them, resolved to follow that precedent, and adopted the precise words of the judgment there given; and, accordingly,

“ Found, that the parishes of Inverarity and Methie being under different patronages, the stipend modified is to be divided equally betwixt the parishes, effeiring to their rentals proven; and that each patron has only right to allocate his proportion thereof within his own right.”

Act. *D. Rac.* Alt. *Nairne.* Teind Clerk.

Fol. Dic. v. 4. p. 30. Fac. Coll. No. 125. p. 337.

No. 28. 1779. August 4. MILLIGAN against The HERITORS OF KIRKDEN.

Mr. Milligan having brought an action of augmentation against the Heritors of Kirkden, the Lords, in their character of commissioners of teinds, in respect of the rule of Court, that no new augmentation should be granted in parishes where one had been obtained since the Union, pronounced a judgment assoilzieing the defenders.

Alt. *Robertson.* Act. *Ilay Campbell.*

C. Fol. Dic. v. 4. p. 300. Fac. Coll. No. 84. p. 141.

* * This case deserves notice, only on account of the circumstances attending it in the House of Lords. It having been carried there by appeal, the heritors contended, that the Lords in the Court of Session, acting in questions of this sort by special authority from the Legislature, and as a committee of Parliament, their decisions were not subject to review. The following procedure took place in the House of Lords.—*May 19, 1783.* Counsel were called in to be heard in this cause; and the counsel were directed to make out, Whether this House hath any appellat jurisdiction from a judgment of the Lords of Session acting as commissioners of teinds? And the counsel desiring time to prepare themselves for the above purpose,

“ ORDERED, That the hearing of this cause be put off till next session, with liberty to bring new cases, if they shall be so advised.”

The judgment of the Court of Session was afterwards reversed, (8th July, 1784), and the cause remitted.