

1803. *March 9.*

The EARL of KELLIE and Others, Heritors of Carnbie, Petitioners.

## No. 94.

An obligation granted by the Minister of a parish to the heritors, that, on withdrawing their opposition to a former augmentation of his stipend, he should not bring another during his incumbency, does not prevent him from again applying for one.

In the process of augmentation and locality brought by the Reverend Alexander Brodie against the Heritors of the parish of Carnbie, the Court (23d February, 1803,) granted a considerable addition to the stipend of the parish. Against this judgment the heritors reclaimed; and, besides contending that the Minister was already adequately provided, and that only eight years ago he had obtained an augmentation, they

Pleaded: At the time the former augmentation was granted, the heritors had intended to oppose it; but, in order to preserve harmony with their clergyman, it was compromised, by their agreeing not to oppose that augmentation, on being relieved from any future claim during the same incumbency. A letter to this purpose was addressed to the Earl of Kellie by the minister, who is thus barred from making the present demand. It is undoubted, that any claim which is competent in a court of law, may be made the subject of compromise; and transactions of this kind, when entered into by persons of age and discretion, so as not to injure themselves, are always declared effectual when challenged. An augmentation was doubtful; the extent at least was uncertain. It was not illegal to stipulate on the one hand, to give what was equivalent to his expectation; nor was it immoral, on the other, to grant a discharge from any future claim of the same kind. It is always of advantage, that the rights of parties, which, though recognised by law, are uncertain both in their extent and operation, should be settled by agreement rather than by a litigious discussion. The present case is not decided by Boyd against Earl of Galloway, 22d January 1794, No. 109. p. 9583. as the Minister there entered into a simoniacal bargain with regard to the extent of his stipend in order to obtain the living. Nor does Minister of Turriff against Earl of Fife, 14th May 1800, (not reported; See APPENDIX,) support the Minister's plea; for there, the Minister having right as titular to the whole teinds of the parish, he had granted a lease of them to Lord Fife, with the ordinary warrandice from fact and deed. In doing this, it was held, that there was an implied limitation to enable the Minister to obtain a suitable stipend; that there could be no difference as to this from a lease granted to the patron, or to a stranger; or whether the granter was the Minister claiming the augmentation or a lay titular.

The petition was refused without answers, (9th May 1803.)

For the Petitioners, *Craigie.*

Agent, *Cha. Stewart, W. S.*

*Fac. Coll. No. 97. p. 216.*