

1803. May 18.

MACRUER *against* MACNICOL.

As the parish of Jura and Colonsay comprehends nine different islands, it was found difficult for one clergyman to discharge the various clerical duties connected with it; and accordingly, during a process of augmentation, the Minister claimed such an additional provision as would afford a fund for an assistant. This was accordingly agreed to, and a stipend was allocated to the minister, (7th August 1769), under burden of 800 merks to an assistant. This sum was separately localled upon the heritors, by a plan which had been proposed by themselves, and to which the minister did not then object. In 1793 a reduction of this locality was brought, and it was set aside on account of inequality in the mode of allocating; and a new one was made out and approved of (16th June 1796), in which the stipend payable to the minister and assistant were separately localled.

In 1798, the Reverend Donald Macnicol, minister of Jura and Colonsay, brought the usual process against the heritors for an augmentation of his stipend, in which Patrick Macruer, the assistant preacher, appeared, craving that a proportional share should be modified to him.

The Court accordingly (3d July 1799) modified his stipend at £.139 6s. 9d. "with the burden always of £.50 to be paid to the assistant preacher;" and remitted "to Lord Justice-Clerk to prepare a locality of said two stipends."

The common agent localled the £.50 to the assistant separately upon the heritors of the island of Jura, where the assistant resided, and which exhausted the stipend allocated upon them. To this mode the Minister objected, and gave in a locality of the whole in favour of himself. This was reported to the Court, and "the Lords, in respect of their interlocutor of 3d July 1799, decerning the whole stipend modified to be paid to the pursuer, (the Minister), with the burden of £.50, to be paid by him to the assistant (or helper), repelled the objections made on the part of the heritors to the locality given in on the part of the pursuer."

The assistant Minister and certain heritors reclaimed, and

Pleaded: Ever since the appointment of an assistant in this parish, there has been a separate locality of the stipends payable to the Minister and assistant, to which the Court has all along interponed its authority. This is not the usual case of an assistant appointed, where through age or infirmity the incumbent is disabled from discharging the duties of his office, but it arises from the peculiar nature of the charge. The appointment is for life, and separately provided for under authority of the Court of Teinds. In point of expediency, it seems proper, that in every case of alimentary provision, the person in whose favour it is granted should have it in the way most beneficial to himself; and the Minister should not be allowed, upon any affected allegation, to put the assistant to the expence of a tedious action for obtaining payment from him; as little should he be put on the footing of a personal creditor of the Minister, so as to suffer by his insolvency or his bad faith. A separate locality was accordingly allocated to the assistant in the parish of Tirii and Coll; 27th January 1769.

No. 95.

An assistant preacher not entitled to have a separate stipend localled upon the heritors in his favour.

No. 95.

Answered: The former mode of allocating the stipend, was adopted in consequence of the suggestion of the heritors, without any appearance on the part of the assistant, and with the acquiescence of the then incumbent; and whatever concessions may have been made by him, can only exist during his life-time, and cannot injure the benefice itself. The assistant not being a regularly ordained clergyman, could not insist in a process of augmentation, and therefore no addition of stipend could be awarded to him, but upon the application of the Minister, and by burdening the stipend with a sum payable to his assistant; for although the Court of Teinds may disjoin or annex parishes, it has not the power of appointing assistants, which in effect erects a new church within the former parish. Thus the Minister of Ardnamurchan was, in 1750, burdened with 500 merks payable to an assistant, which was raised to 1000 merks on a new augmentation. (29th June, 1796). The Minister of St Ninian's was likewise decerned to pay 600 merks to an assistant, (11th February 1778), which, on a new application for stipend, was raised to £.600 Scots, (19th May 1802). In the case Tirii, the arrangement was made by the heritors, as the price of acquiescing in the claim for augmentation, and not objected to by the Minister on that account.

This was considered as an important general question of law, and it was unanimously held by the Court, that the Minister being the only incumbent, was the only person entitled to sue for an augmentation, and must have the whole stipend modified and localled to him in the first instance, though his right should be burdened in favour of the assistant, who was subordinate to him, and over whom it was expedient he should have this controul, as being one for whose behaviour and character he was in some measure answerable. Nor would the Court listen to the plea, that the Minister should find security for this payment, as no irregularity was alleged to have taken place formerly, and there was an easy remedy if any should occur in future.

The Court accordingly "adhered."

Lord Ordinary, *Justice-Clerk.* For Macruer, *Connell.* Agent, *J. Campbell, 4tus, W. S.*  
For Macnicol, *A. Campbell, junior.* Agent, *Crawford Tait, W. S.*

F.

*Fac. Coll. No. 101. p. 221.*

1803. July 8.

The KING'S COLLEGE of ABERDEEN *against* The EARL of KINTORE.

No. 96.

Absolute warrandice being granted by the titular to an heritor in a tack of his teinds, the titular, in the case of an augmentation, is not

The King's College of Aberdeen is titular of the teinds of the parish of Marykirk, in which are situated the lands of Inglismaldie, belonging to the Earl of Kintore. A certain proportion of the teinds is payable to the Minister, the rest being paid to the College.

In 1785, a contract was entered into for nineteen years, by which the titular "disponed to the Earl the whole teinds payable out of these lands, consisting of 78 bolls 1 firloft 2 pecks of meal, and 35 bolls bear, with warrandice at all hands;" taking him bound, on the other hand, "to pay yearly to the Minister