the privilege, or as an act of possession naturally resulting from a right in the tithes; and as, in its own nature, it was intended to have a perpetual effect, *viz.* to regulate the proportional payment of stipend in all time coming; so, whenever that power was exerted by the person who had the right at the time, the effect must, in every case, be the same. No 356.

Where a patronage was granted for a single *vice*, it would be no objection to the Minister's drawing the stipend in all time coming, that, upon granting the presentation, the patron was divested of his right. Where a right of titularity was granted in wadset, there could be no doubt that the wadsetter would be entitled to make an allocation; nor would any objection arise to it on the wadset's being redeemed.

The Judges were, in general, inclined to question the tacksman's power to make an allocation, to endure after the termination of his temporary right. As they were clear, however, upon the other points in the cause, *viz.* that the proceedings had been in absence, and that there had been an error fallen into, and a wrong done, they did not think it necessary to pronounce a positive judgment upon that abstract point. They accordingly sustained the reasons of reduction of the decree. (4th December 1771.)

For Wallace Dunlop, *W. Wallace.* For the Earl of Stair, *Macqueen, D. Dalrymple.*

R. H. *Fac. Col. No* 113. *p.* 335.

1798. *May* 16.

DR JOHN SMITH and DR GEORGE ROBERTSON *against* The DUKE of ARGYLE.

No 357.
A decree *in foro*, approving of a subvaluation, to which the minister was a party, cannot be called in question by his successor.

PART of the teinds of the parish of Campbelltown, belonging to the Duke of Argyle, were valued by the sub-commissioners in 1629; and in 1772 his Grace got the report approved of by a decree *in foro*.

In 1797, Dr Smith and Dr Robertson, the ministers of the parish, the former of whom had been settled subsequent to the decree of approbation, brought a reduction of it, on the ground that the valuation had proceeded without proof, and without the consent of the minister; 4th February 1795, Fergusson against Gillespie, *voce* TEINDS.

In defence, the Duke founded on the decree of approbation, and contended, that supposing the plea of the pursuers to be otherwise well founded, it was barred by the exception of competent and omitted.

THE LORD ORDINARY "repelled the reasons of reduction."

In a reclaiming petition, the pursuers

Pleaded; The defence of competent and omitted is good only against the parties in the former litigation, having the full administration of their own property, or their representatives; Erskine, B. 4. Tit. 3. § 3. Hence it cannot be pleaded against minors; Bankton, B. 1. Tit. 7. § 89.; Erskine, B. 1. Tit. 7.

No 357. § 38.; 11th December 1705, Murray, No 132. p. 9001; nor against a fiar, upon a decree obtained against a liferenter. But a minister does not represent his predecessor; and his right both to the spirituality and temporality of the benefice is merely usufructuary, being restrained from alienating the former by common law, and the latter by statute 1572, § 48. As a minister, therefore, cannot directly hurt the benefice by dilapidation, it follows *a paritate rationis*, that he cannot do so indirectly, by omitting to state the proper defences in any action with regard to it.

The Lords refused the petition, without answers.

Lord Ordinary, *Justice-Clerk Braxfield.* For the Petitioners, *W. Robertson.*

R. D. *Fac. Col. No 72. p. 165.*

1804. *February* 24. Clark *against* Watson and Others.

No 358.
In reducing a decree of an inferior court, the pursuer of the reduction must extract the decree, so as to satisfy the production, if the defender does not make any claim under it.

William Clark, owner of the Midsummer Blossom, brought an action before the Court of Admiralty against John Watson, advocate in Aberdeen, and others, underwriters on the freight on a voyage from Honduras to London, for payment of the sums underwritten by them.

The Judge-Admiral assoilzied the defenders, but found no expenses due to either party.

A reduction of this decree was brought into the Court of Session, in which it was disputed, which of the parties was to be at the expense of extracting the decree of the Judge-Admiral, in order to satisfy the production.

The Lord Ordinary verbally reported this incidental point to the Court, who were clear, that the pursuer in the reduction must extract the decree at his own expense, when the other party makes no demand under it. The question had already more than once been so decided; case of Norman Morison against Underwriters in Greenock, about the year 1792 or 1793; and a subsequent case to the same purpose in 1799, *see* Appendix.

Lord Ordinary, *Craig.* Act. *Clerk.* Agent, *P. Irvine, W. S.*
Alt. *Gillies.* Agents, *G. Robinson, W. S.* *R. Ainslie, W. S.*

F. *Fac. Col. No 149. p. 332.*