

ported to the Court. Upon advising a memorial on the subject, it was found to be incompetent; a decision which had been formerly given in Stevenson against Barclay, 9th March 1756, No. 27. p. 5747.

Lord Ordinary, *Glenlee*.

Act. *Fergusson*.

Agent, *W. Wallace Brown*.

F. Coll. No. 219. p. 493.

Fac. Coll. No. 219. p. 493.

NO. 7.
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crees of the
Justices of
Peace.

1806. July 2. DICK against MAGISTRATES OF EDINBURGH.

NO. 8.

By an act of sederunt of the Lords of Session, as Commissioners of Teinds, of the 31st January 1722, "The Lords of Council and Session, Commissioners for plantation of Kirks and valuation of Teinds, considering that processes before the Commission, do require great dispatch, and that there is only a weekly diet of meeting of the said Commission, and that the dispatch of business is much retarded by reclaiming bills; therefore, the Lords do hereby discharge their clerk, or his depute, to receive more than one reclaiming bill against any interlocutor pronounced by the Court; and declare that they will not hereafter receive nor hear any reclaiming bill but upon new documents, or matters of fact, and sufficient evidence given, that the same is recently come to the knowledge of the party reclaiming."

The Reverend James Dick, minister of Currie, raised a process of augmentation, in which the Magistrates of Edinburgh, the titulars of the parish, were called as defenders. On the 4th of December 1805, the cause was stated by the pursuer, when no appearance was made for the defenders, and the Court pronounced the following interlocutor: "The Lords having advised the scheme of the rental and prepared state, they modify, discern, and ordain the constant stipend and provision of the kirk and parish of Currie, to be for the last half of this present crop and year of God 1805, and yearly in time coming, 81 bolls 2 firloths of meal, 73 bolls 2 firloths of bear, 26 bolls of wheat, 11 bolls of oats, and L. 600 Scots money for stipend, with 100 merks money foresaid, for furnishing the communion-elements."

The Magistrates presented a petition against this interlocutor; upon advising which, "The Lords alter their former interlocutor, and of new modify, discern, and ordain the constant stipend and provision of the parish of Currie, to be for the last half of this present crop and year of God

No. 8.

“ 1805, and yearly in time coming, 81 bolls 2 firlots of meal, 76 bolls 3 firlots of bear, 22 bolls 3 firlots of wheat, 11 bolls of oats, and L. 600 Scots money for stipend, with 100 merks foresaid, for furnishing the communion-elements, and declare that the victual-stipend hereby modified shall be payable in money, according to the fair-prices of the county.”

A second petition was presented by the Magistrates, complaining of the amount of this augmentation, to which it was objected by the minister, that the petition was incompetent; and the Court (26th February 1806) “ refused the petition as incompetent.”

The Magistrates again reclaimed, and

Pleaded: The object of the act of sederunt is, that after the Court had pronounced a deliberate judgment, it should only be competent for the party to present one reclaiming bill against that interlocutor. This, however, does not apply to interlocutors in absence, because in that case, the party has not been twice heard in the cause, unless a second reclaiming petition be received. But, besides, the interlocutor of the 18th December is a new interlocutor, for by it the former interlocutor was altered, and a different stipend modified to the minister, from that which had been previously granted, so that in the strictest sense of the act of sederunt, the petition was competent.

Answered: From the nature of the proceedings in the Teind-Court, there cannot be such a thing as a decree in absence, because that Court always decides in cases of augmentation, not according to the demand of the pursuer, but upon a statement of the facts of each case, and upon the evidence before them. The defenders were personally cited to appear, and if they did not choose to appear, they cannot be put in a better situation on that account. It is in vain to pretend that the interlocutor of the 18th December was a new interlocutor, because it only made a small alteration in the species of grain allocated to the minister, the quantity of victual-stipend remaining very nearly the same; and though this alteration might have entitled the pursuer to have presented a petition against that interlocutor, the defenders, who were put in a better situation by it, were not entitled to the benefit of a second reclaiming petition, contrary to the provisions of the act of sederunt.

The Court were a good deal divided in opinion with regard to the question of competency under the act of sederunt. By a majority, however, the objection to the competency of the petition was repelled, and the interlocutor was altered, by diminishing the victual-stipend.

Act. Clerk, *Maconochie.* Agent, *James Gibson, W. S.* Alt. *Blair, Cathcart.*
Agent, *Jo. Macritchie.*

J.

Fac. Coll. No. 255. p. 573.