

No 193. lawfully assume the management, or ascribe it to the nomination, in opposition to the express terms thereof. As to the decision quoted, it is single, and contrary to all principles, that a power entrusted with two should be carried into execution by one; besides, it seems to be founded on this, that the tutors nominate had refused to accept, which cannot apply to the present question, seeing here the defender is charged with secreting the nomination; nor can a single act, wherein she concurred with Provost Allardice during the curatory, found any presumption, that from the beginning she behaved in the same manner; neither is the argument drawn from the acts and deeds of an illegal magistracy to the purpose, as that is founded on reasons of public utility, and the inconveniencies that might follow a contrary doctrine.

*Lastly*, It is begging the question to say, that the objections to her management are not competent after the prescription is run, as the point in dispute is, whether or not she is entitled to the benefit of the prescription at all?

THE LORDS sustained the defence upon the act of Parliament 1696.

*C. Home, No 8. p. 24.*

## DIVISION VI.

### *Præscriptio decennalis et triennialis.*

1612. December 7. EARL HOME *against* LORD BUGGLEUCH.

No 194. FOUND, That 30 years possession *in ecclesiasticis* ought to be a sufficient title in place of the old custom, which required ten years before the Reformation.

*Fol. Dic. v. 2. p. 114. Kerse.*

\* \* \* This case is No 42. p. 7972., *vace* KIRK PATRIMONY.

No 195. 1622. July 24. EARL of WIGTON *against* GRAY and DRUMHEAD.

THE LORDS repelled an exception of triennial and dicennial possession, being proponed *contra verum patronum*, in respect of the express words of the rule of the chancellory, whilk bear *dummodo ad beneficium, per eos ad quos presentatio pertinuit, presentati fuerunt.*

*Fol. Dic. v. 2. p. 114. Kerse, MS. fol. 9.*