

No 211. proved by writ, to elide the same, but if for fewer years, they found the tolerance or sufferance probable by witnesses.

Fol. Dic. v. 2. p. 228. Stair, v. 1. p. 739.

* * * Gosford reports this case :

THE Minister of the parish having divided a glebe of four acres of lands, on a designation, out of the Dutchess of Buccleugh's estate, the Duke and Dutchess did pursue an action of relief against the Heritors of the parish for their proportions effeiring to their respective estates. It was *alleged* for the Heritors, That they could not be obliged for relief of an acre and a half of the said four acres, because the Minister had been in possession of so much before the designation by the space of twenty years, the same falls into the pursuer, who, by his designation, is to possess no other four acres as his glebe, and so that acre and an half relieves the pursuer *pro tanto*. It was *replied*, That any possession the Minister had of that acre and an half was only out of sufferance and favour, because he had no glebe designed; and a naked possession, without a title, could not take away the pursuer's right of property, unless it could be alleged, that the said acre and an half was either mortified or kirk-land, in which case *decennalis triennalis possessio habetur pro titulo*; whereas it is offered to be proved, that the pursuer and his predecessors were infeft in the said lands as their own property, and were in possession thereof past the memory of man before the Minister's entry thereto, which was only by sufferance, he having neither decret nor designation. THE LORDS did repel the defence in respect of the reply, and sustained the relief of the whole four acres divided amongst the heritors *pro rata*.

Gosford, MS. No 358. p. 174.

No 212.

1668. June 15.

LAIGUE against VAUSE.

AUCHENTOULE, Lord Probationer, reported the case between Laigue, merchant in London, and Mr John Vause, late keeper of Edinburgh tolbooth, for letting Charles Scott of Bonnington escape. The defence was, he did it by allowance of Robert Innes, his factor; which was offered to be proved by the comuners present. *Answered*, A command, mandate, or order, is probable only *scripto vel juramento*, which the LORDS, on his report, found.

Fol. Dic. v. 2. p. 229. Fountainhall, v. 1. p. 506.