

1681. February 24.

LESLIE *against* MINISTER and PARISHIONERS of Glenmuck.

IN a competition betwixt Dr Leslie, having right to a tack of the teinds of the parish of Glenmuck, and the minister of Glenmuck, it was *alleged* for the minister, That he and his predecessors ministers, had been long in the possession of the teinds of the parish, by tack, or use of payment, more than 13 years, *et decennalis et triennalis possessor non tenetur docere de titulo*. It was *answered*, That the 13 years possession exems from producing a title, but presumes a title to a churchman; yet it infers no prescription, and cannot take place where the churchman's title is produced; for *præsumptio cedit veritati*; but here the minister's decret of locality is produced, which is his title, and he can claim no more, unless he instruct an augmentation, or at least prescription; but his possession will not exclude the right of the titular or tacksman, he being but a stipendiary.

THE LORDS found, That 13 years possession could not give the minister further right than the decret of locality produced, though the locality was old.

Fol. Dic. v. 2. p. 114. Stair, v. 2. p. 868.

No 200.

Possessio decennalis et triennalis of a minister, found not to exclude a tacksman of teinds, where the minister's decret of locality was produced, and no teinds mentioned in it.

1684. February.

BARKLAY *against* The PROVOST and MASTERS of the College of St Andrew's.

MR WILLIAM BARKLAY minister at Forthvieot having pursued the Provost and old Masters of the College of St Andrew's, titulars of the teinds of the parish, for payment of L. 40 Scots yearly, for several years bypast, which was granted to him by the former Provost and Master of the College for augmentation of his stipend; *alleged* for the defenders, That the pursuer being completely provided, conform to the act of Parliament, having eight chalders of victual, and 100 merks of money, the former Provost and Masters, being only administrators of the College rents, could not warrantably give any augmentation to the minister, that being a deliquidation and alienation of the College rents. *Answered*, That the pursuer and his predecessors having been above 18 years in possession of the said L. 40 out of these teinds, it is a principle in the common law, that *decennalis et triennalis possessio in ecclesiasticis habetur pro titulo*, and gives him a right to the same without being obliged to produce any other right; much more ought it to maintain him *in judicio possessorio*, as was decided the 25th November 1665, Mr James Peter against John Mitchelson, No 35. p. 10640. and the cause of Mr Alexander Fergusson against Alexander Agnew, (*See APPENDIX*); and there being free teinds of the parish, and the defenders being titulars of these teinds, if the memorialist had pursued them before the

No 201.

Found that a right, null because not subscribed by the major part of the regents of a college, could not give a minister the benefit of *decennales et triennales possessio*, which is only a presumptive title.

No 201. Commission of the Kirk, he would have gotten an augmentation ; and the fore-said L. 40 was granted to him in place of the augmentation which he would have gotten if he had raised a pursuit against the defenders before the Commission. *Replied*, That the rule in law is, that *decennalis et triennalis possessio*, gives the benefited person only a presumptive title, and secures him in the possession, unless that another person instruct a better and more preferable right, as was decided the 24th February 1681, Dr Leslie against the Minister of Glenmuck, *supra*, where the Lords found, that 13 years possession of viccarage by a minister, did not give him right to the teinds in prejudice of the tacksman, seeing the minister's decret of locality doth not carry the viccarage teinds ; and the defenders are in a much stronger case, they not having right to the teinds by the tack, but by several acts of Parliament of King James IV. and King James VI. ; and the right granted to the pursuer of the said L. 40 is only by Mr James Wood and Dr Burnet, two of the seven Masters of the College, without consent of the rest ; and the defenders have raised a reduction of the pursuer's right, which they now repeat ; and when he shall pursue for an augmentation before the Commission, he shall have an augmentation. But albeit the right had been granted by all the Masters, yet it could not prejudge the College ; much less when the same is only granted by two, without consent of the rest. THE LORDS found, That the right granted to the pursuer's predecessors was null, in respect it was not subscribed by the major part of the Regents and Masters of the College ; and that the right being null, could not give the pursuer the benefit of *decennalis et triennalis possessio*.

Fol. Dic. v. 2. p. 114. Sir P. Home, MS. No 568.

* * Harcarse's report of this case is No 32. p. 7957. *voce* KIRK PATRIMONY.

No 202.

Possessio decennalis et triennalis by a stipendiary minister, of a surplus duty, over and above the quantity of stipend contained in his decret of locality, was refused to be sustained as a sufficient title to pursue for payment of that surplus duty, in respect of the special decret of locality.

1708. July 23.

The RELICT and CHILDREN of the deceased Mr ROBERT RULE, Minister at Stirling, *against* The MAGISTRATES thereof.

IN the action at the instance of the Representatives of Mr Robert Rule, against the Magistrates of Stirling, as administrators of Cowan's Hospital, for payment of L. 10 Sterling of yearly stipend for ten years, in use to have been paid for the space of thirteen years to former ministers of Stirling out of the teinds of Raploch, belonging to the hospital, over and above the quantity modified in their decret of locality, and withheld from Mr Rule all the ten years of his incumbency ;

Alleged for the defenders ; The minister of Stirling's stipend was concluded by a decret of locality, which doth not affect the teinds of Raploch ; and the presumptive title of *decennalis et triennalis possessio*, being effectual only to ministers who have no other title in their person, cannot avail the pursuers, as re-