

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-

presenting Mr Rule, who had a decret of locality, to which presumption must cede, 24th February 1681, Dr Leslie *contra* the Minister of Glenmuck, No 200. p. 11001.

No 202.

Answered for the pursuers; Thirteen years possession is a presumptive title to any minister, though he be a stipendiary; seeing, *imo*, The reason of that possessory privilege, viz. Because churchmen are supposed ignorant and negligent of their rights, whereof they are but liferenters, and these rights are subject to be lost in the change of incumbents, doth equally hold in the case of stipendiaries and beneficed persons; *2do*, Any stipendiary minister may, notwithstanding his decret of locality, get an augmentation of stipend from the Commission out of the free teinds of his parish, or enjoy a mortification; and thirteen years possession of the teind-duty claimed, is upon the matter a tacit augmentation, or perhaps was mortified to such a pious use. The decision 1681, betwixt Leslie and the Minister of Glenmuck, No 200. p. 11001. concerns the case of a minister who had been thirteen years in possession of the teinds of his parish, *jure parochi*, whose possession was ascribed to a decret of locality afterward produced; because a promiscuous possession could not be extinguished and applied to different titles. But here a minister having uplifted his stipend, contained in a decret of locality, by virtue thereof, and a superplus duty beside for thirteen years, that thirteen years possession must be imputed to a distinct title by mortification, or a decret of augmentation, or the like, which law presumes to be lost; and how many ministers in Scotland have both localities and separate titles for additional stipend?

THE LORDS sustained the pursuers title of *decennalis et triennalis possessio*, as sufficient, notwithstanding of the special decret of locality. But thereafter,

November 1708, upon a reclaiming bill given in by the defenders, and answers made thereto by the pursuers, the LORDS altered their former interlocutor, and repelled the pursuers allegiance, founded upon *decennalis et triennalis possessio*, in respect of the decret of locality, to which the presumptive title must cede.

Fol. Dic. v. 2. p. 114. Forbes, p. 273.

1733. July. MINISTER of Morbittle *against* HERITORS.

No 203.

Triennalis et decennalis possessio was sustained in a process for bygone services of carrying coals, and certain quantities of butter. (See APPENDIX.)

Fol. Dic. v. 2. p. 114.