

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.

* * * Haddington reports this case :

No 195.

THE Earl of Wigton pursued reduction of the Archbishop of Glasgow's pretended right to the patronage of the kirks of Drummelzier, &c. and Mr Alexander Schieyne, minister, his provision, proceeding upon the Archbishop's presentations. The Archbishop compeared not. Mr A. Schieyne compearing, *alleged*, That he could not produce his provision, because he was *triennalis et decinnalis possessor beneficii, et ita non tenebatur docere de titulo*. It was *replied*, That being provided by the right patron, he needed not to show his title ; but the patron's right being taken away, by the certification of the summons, the minister behoved to produce to the right patron ; in respect of the whilk reply, the LORDS repelled the exception.

Haddington, MS. No 2660.

1664. December 21. MR JAMES CRAIG *against* HILLHEAD.

No 196.

MR JAMES CRAIG, minister at Hoddam, having pursued a removing against the Laird of Hillhead, and the relict of Mr John Alexander, last incumbent, from the house where the said Mr John dwelt by the space of 30 or 40 years, during his service at the said kirk ; it was *alleged* for the defenders, That the house being built upon Hillhead's ten merk land of Luss, and built by the former minister by Hillhead's toleration, and that there was never any such designation of a minister at such a distance from the church. THE LORDS, notwithstanding found, That Mr John Alexander, the last incumbent, his possession, was the present inrant, his possession, and that it was enough to term him therein, in regard he, or his authors, were *decennalis et triennalis* possessors.

Fol. Dic. v. 2. p. 114. Newbyth, MS. p. 13.

1671. June 23. DUKE OF MONMOUTH *against* PARISHIONERS OF HALSENDEN.

No 197.

THIRTEEN years possession by a minister, of lands wherein an heritor stands infest, and was in possession before the minister's entry, who could allege neither mortification nor that it was kirk-land, nor could show a legal title, was interpreted a tolerance only, so as not so take away the heritor's right by prescription.

Fol. Dic. v. 2. p. 114. Gosford. Stair.

* * * See the particulars of this case under the names, Duke of Buccleuch against Parishioners of Halsenden, *voce* PROOF.