

S E C T. III.

Stipends.

1678. July 23. BAIRD *against* The PARISHIONERS of FYVIE.

JAMES BAIRD, as donatar to the escheat of the Minister of Fyvie, pursues the Parishioners for bygone stipends, who *alleged*, Absolvitor, because by the late act of Parliament, stipends prescribe if not pursued within five years after they are due. It was *answered*, That the act is not a simple prescription, but *quoad modum probandi*, that they shall only be proved by writ, or oath of party: *Ita est*, there is writ here, viz. a decret of locality. It was *replied*, That the act requires probation by writ, under the hand of the debtor, acknowledging the stipend to be resting, which is not in this case.

THE LORDS sustained the defence, seeing there was no writ under the Parishioners' hands acknowledging these stipends resting, or that they were proved by their oaths resting, albeit several years had run before the pursuer had got the gift of escheat, which he alleged should not be counted, the right being then the King's.

Fol. Dic. v. 2. p. 118. Stair, v. 2. p. 639.

1683. March.

HAMILTON Executor of BISHOP of GALLOWAY *against* JOHN HARRIES.

In a pursuit at the instance of the Executors of the late Bishop of Galloway, for some teinds whereof he was titular, *alleged* for the defender, That five years being elapsed since the teinds pursued fell due, the libel is not relevant, unless it be proved by the defender's oath, that these teinds are resting, conform to the late act of Parliament concerning the quinquennial prescription of ministers' stipends. *Answered* for the pursuer, That the said act concerns not the revenues of bishops, but only the stipends of stipendiary ministers of the inferior clergy, upon this presumption, that the latter having small provisions, will not probably let their stipends lie long over unpaid; but that the teind belonging to the bishop as patron would no more prescribe against an ecclesiastic than against a laic titular. *Replied*, The rent of any benefice may be called a stipend; and by the act 20. Sess. 3. Par. I. Cha. II. pointing for ministers' stipends is applicable to any ecclesiastic benefice.

THE LORDS sustained the answer made for the pursuer.

Harcarse, (PRESCRIPTION) No 762. p. 215.

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No 254.

A stipend not being pursued for in five years, can be proved only by writ or oath of the defender.

No 255.

The act 1669 found not to apply to the revenues of Bishops.