

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 Forтеviot 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.