

1676. November 28. MR GABRIEL SEMPLE *against* HIS PARISHIONERS.

No 198.

Thirteen years peaceable possession by a minister of his stipend, was found relevant against an old decree of locality, burdening the parishioners with a lesser stipend, unless it were instructed that the pursuer, or his predecessors, had possessed by that decree.

MR GABRIEL SEMPLE pursues his parishioners for his stipend, who defend upon a decret of locality for a less duty. The pursuer *replied*, That though the decret of locality bear ' his predecessors called,' yet they are not compearing, and neither his predecessors nor he did either know or acknowledge the same, but have been *triennales et decennales* possessors of the stipend libelled; and therefore, *in possessorio*, ought to be continued in their possession, and are not obliged to dispute the point of right; for as persons infest are secure by seven years possession, so beneficed persons ought to be in the same way secured. But even *in petitorio*, they are not obliged to produce any right, if they have peaceably possessed 13 years, unless their possession had been by virtue of a special right contained in their presentation, which in that case would regulate their possession. But where it cannot be instructed that they have possessed by any particular title, but by a general presentation as minister, and by a general rule of law, whereby *decima debentur p̄rocho*, they must continue their possession without alteration by any clandestine valuation, which, though of a very old date, did never take effect. And seeing the heritor for the time might have renounced, or passed from that decret, the presumption of law for beneficed persons, inferring their title from their long possession, and not obliging them to produce their predecessor's rights, which might have been lost, or given up by collusion, they are secure. It was *answered*, That the defender was a singular successor, and seeing a decret of locality, he was *in bona fide* to purchase and enquire no further.

THE LORDS found the reply of 13 years peaceable possession relevant against the decree of locality, unless it were instructed that the minister, or his predecessors, had possessed by that decret, either by their presentation, or discharges relative thereto.

Fol. Dic. v. 2. p. 114. Stair, v. 2. p. 468.

No 199.

1678. November 29. MR JOHN BIRNIE *against* BROWN of Bishopton.

THE LORDS, at the instance of a minister against the parishioners, decerned for a yearly sum out of each weaver's loom, and for the salt made in the parish, though these were *decimæ industriales*, in respect of 40 years possession, which at least is required where teinds are only due locally, *et per consuetudinem*; but in the usual teindable species, such as lamb, wool, &c. *triennalis et decennalis possessio* is sufficient, which difference is observable.

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

* * This case is No 1. p. 2489., *vide* COMMUNION ELEMENTS.