

No. 15. part. The Lords, however this might militate against him, if a co-creditor were pursuing him to count, yet they considered Ministers had action against none but intrmitters with the teinds; therefore they sustained the defence, and found him liable only for what he possessed. *2do*, He alleged, I cannot pay you at the rate of £.60 yearly, because, by a decret of valuation produced, the teinds extend only to four bolls of bear of Nithsdale measure, and he is content to pay conform to that. Answered, In dear years, these four bolls (which will be ten of Linlithgow measure) will be more than £.60, yet he must have it in money, because he offers to prove he has been thirteen years in possession of it; and by the regula cancellariæ apostolicæ triennialis et decennialis possessor non tenetur docere de titulo; and was so found, Lesly against Parishioners of Glenmuck, No. 200. p. 11001. *voce* PRESCRIPTION. Replied, That rule held only as a presumptive title of a churchman's possession, where the true one does not appear; as is evident by the decision, Bishop of Dumblane against Kinloch, No. 28. p. 7950, *voce* KIRK PATRIMONY; but here the valuation (which must be the only rule of the Minister's stipend) is produced. The Lords found it enough for the Minister to prove seven years use of the payment of the £60, to make the heritor liable for bygones, till the valuation, in a declarator, were made the rule in time coming. See TACK.

*Fol. Dic. v. 2. p. 394. Fountainhall, v. 1. p. 782.*

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1698. December 22. CATHCART against PATON.

No. 16.

A creditor having pointed corns standing in the stouks, and carried a rip of them to the market-cross, which was all he could do in that case; and the Minister for his stipend, and some preceding rests, having pointed the same corns before they were threshed, and carried away as much as would answer to the teinds; the Lords found, That the Minister had committed no spuilzie, but that he had right to retain, in so far as extended to the common debtor's proportion of a year's stipend, but not for any bygones; and that he must restore the superplus.

*Fol. Dic. v. 2. p. 394. Fountainhall.*

\* \* This case is No. 41. p. 10524. *voce* POINDING.

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1726. June.

Mr JOHN CAMPBELL, Minister at Kirkbean, against Dr. JOHN MURRAY of Cavens.

No. 17.

Whether an heritor, upon whose lands the stipend is localled, is liable

In the year 1750, a decret of modification and locality was obtained at the instance of the Minister at Kirkbean, against the heritors; and the proportion of stipend, which by that decret was charged on the teinds of the twenty-four merklands of Preston, which are now the property of Dr John Murray, extends to 440