

vinced either that Pitfoddell's charter did truly contain *decimas inclusas*. It is not usual to bring decreets of the Commission to be recanvassed before the Session : though this is rather a reference of a hard kernel in law to them that are most used in breaking them. Yet I remember, on the 27th of January, 1670, (*Vide it supra*, No. 111,) M'Keinzie contra M'Keinzie, Gosfuird sustained himself judge competent to a reduction of a decret of the Lords of the Plat for Kirks, though the Advocate declined it. The truth is, it being a committee of Parliament, it is at least coördinate with the Session. See M'Keinzie's Criminals, part 2, titulo 3, Of the Jurisdiction of the Parliament, p. 366.

There are no *decimæ inclusæ* with us, but such as were so possessed, and holden, and reputed, before the 29th act, in 1587, annexing all the kirk-lands to the crown.*

As for the rights of kirk-lands, granted after March, 1558 ; (because then the Reformation prevailing, churchmen did wilfully delapidate their rents and benefices,) they are null, *ipso jure*, by the 88th act, Parliament 1564, and 7th act in 1584, unless they were confirmed by the King, who came in place of the Pope. See Craig, Feud. page 108.

In prosecution of the foresaid reservation, Monymusk has raised his process of declarator before the Session, against Pitfoddells, for bearing a proportional part of the augmentation, his teinds not being the privileged *decimæ inclusæ*. See the 12th of July 1678, [*Dictionary*, p. 15718,] where it is decided they are not *inclusæ*.

Advocates' MS. No. 586, folio 290.

1677. June 29. The ARCHBISHOP of GLASGOW against TWO COMMISSARY CLERKS of PEEBLES.

DOCTOR BURNET, now Archbishop of Glasgow, pursues two commissary clerks of Peebles, for putting them from their place.

ALLEGED, They cannot be removed, because they possess by virtue of a gift from Robert Leighton, when he governed that diocess.

REPLIED, That gift could not defend them, because it was *a non habente potestatem*, he never being Archbishop of Glasgow, in so far as he was never legally translated from Dumblaine to Glasgow, as the canons require. (See the form of the translation marked by me *alibi* from the service book, in June 1677, on the translating of Mr Murdoch M'Keinzie, from Moray to Orkney.) *2do*, the conjoining of two in one office, and to the longest liver, is unlawful, and not to be permitted in any but proprietors ; else administrators of bishoprics may, by such tailyics, survivances, and reversions, forestal all the profit of places for an age to come, and pre-judge his successor in the place : which is most unreasonable, for if he may conjoin two, then he may put in six, viz. the father, son, and grandchild, or brother, and so enhance all for fifty or sixty years to come.

DUPLIED, By our law translations are not absolutely necessary ; see act 1, in 1617 ; that it is but a Popish nicety, which can never be obtruded against so material equity, where they are invested in a place by one who had a putative title, and

* Fishings, in many places, pay no teind ; for *decimæ minores sunt locales, et debentur tantum secundem consuetudinem*. Multures have also been found free of teind ; and in a late debate anent the teinds of Tulloch-mill, the Lords sustained the whole rental of the mill thereof to be free of teind, without respect to the mill-lands or mill-croft.

the King's call, and was in actual possession, and holden and reputed Archbishop ; *Vide L. 3, Barbarius Philippus, D. de Officio Prætoris* ; and they were *in bona fide*, to take a right from him. As for the conjoining, custom has made the same lawful, there being nothing more universal ; as old Sir David Falconer of Glenfarquhar and his son Sir David, were conjunct commissaries of Edinburgh ; Mr Henry Hay, clerk to that commissariat, had got the place also continued on his son ; Sir William Purves had done the same with his office of solicitor to his Majesty ; and the Lyon had the gift of that office to himself and his son ; and Mr William Ramsay, and Mr James Rocheid, were conjunct clerks of Edinburgh.

TRIPLED, That any canonist who understood anything of the investiture of the clergy in church benefices, would confess that translation was absolutely necessary to give him a right to the benefice *ad quem* ; for they go upon two grounds. *1mo*, They account it *spirituale matrimonium* between the bishop and his church : now the marriage knot cannot be dissolved till he be transferred. *2do*, In imitation of the personal rights in the feudal law, their *breve testamentum*, or charter, and their *investitura et inductio in possessionem*, the canons have introduced presentation, collation, and institution ; and where one is transplanted, then the translation is his new investiture and induction unto the possession ; and without that they acknowledge no right in his person, neither to perform spiritual offices within that diocese, or to intromit with the temporality and rents. See *Tit. de translatione clericorum in decretalibus*, and Lancelot's *Institutiones Canonice* : see Dynus's Commentary *ad Regulam 1 Juris Canonici*, and my summary of him. *Vide infra, num. 625, [27th July, 1677, Duke of York against the Earl of Argyle.]* See the like question in Joannes Imbertus his *Institutiones Forenses, libro 1, cap. 16. pag. 69.*

The Lords sustained the clerks their conjunct gifts, in respect of the custom to give the survivance of places, and repelled all the reasons of declarator and reduction against the same.

Advocates' MS. No. 588, folio 291.

1677. July.

GRANT against M'KEINZIE.

A CHARTER being granted by the Marquis of Douglas, of the lands of Logie, to be holden ward, yet bearing a licence and faculty to grant subinfeudations of it ; the vassal having given out a part of the lands to be holden blench ; whereupon it being ALLEGED the lands were fallen in recognition, and they defending against it upon the foresaid licence :

The Lords found, it gave no power to feu, but according to law ; (besides blench is not feu) and it could not have been feued under the retoured duty, since the act of Parliament in 1606 : yet they restricted the recognition, because of the probable mistake to the composition, viz. the year's duty paid to the superior. *Vide supra, 1669, Pitreichy and Geicht, November 1676, numero 508, § 6 ; item numero 580, § 3, [November 1676.] [26th June 1677, Birnies against Moray.]*

Advocates' MS. No. 590, folio 291.