1679. *January* 10.

THE COLLEGE OF ABERDEEN *against* The EARL OF ABOYNE.

No. 13.
Stipend not due to a Minister for terms after deposition by a Synod.

The parishioners of Coull having raised a double-poinding against the College of Aberdeen, pretending right to the vacant stipends of that parish, as vacant by the deposition of Mr. James Gordon, late Minister, by the act of Parliament applying vacant stipends to Colleges, and the Earl of Aboyne as assignee by the Minister; the heritors alleged against both, that albeit the Minister was deposed by the Synod before Whitsunday, yet he had preached thereafter, and they had paid him *bona fide* before intimation of his deposition; which the Lords sustained. It was alleged for Aboyne, that he ought to be preferred to the College for the stipend due at Whitsunday, though after deposition, being before intimation thereof to the parish, seeing the Synod suffered him to preach, and did not publish his deposition.

The Lords found, That the deposition did exauctorate the Minister, and that it was wrong for him to preach thereafter, and that neither he nor his assignee could claim any of the stipend due for Whitsunday, after the deposition.

Stair, *v.* 2. *p.* 668.

1696. *February* 26. COUPAR *against* The EARL of ROXBURGH.

No. 14.

The Lords found, That where Ministers pursue for a locality, before the commission for plantation of kirks, the patron may make an allocation, but that, in a process before the session, it was not receivable, but that the Minister might distress any to the value of their teinds, until his stipend were settled.

Fol. Dic. v. 2. *p.* 393. *Fountainhall.*

*** This case is No. 232. p. 12411. *voce* PROOF.

1697. *July* 7. JOHN MALCOLM *against* IRVING of Gribton.

No. 15.
In a question with an appriser, who had possessed only one of the rooms apprised, he was found liable only for what he possessed.

Mr John Malcolm, Minister at Holywood, pursued Irving of Gribton, for £.60 Scots, as his yearly stipend forth of these lands. Alleged, 1*mo*, That he had apprised both Over and Nether Gribtons, but had entered to possession of only one of these rooms, the others being all these years possessed by Maxwell, the common debtor, from whom he had apprised, and so could be no farther liable but conform to his intromission and possession. Answered, You must be liable for the teind of the whole, unless you condescend *quo modo* you was debarred from the one room more than the other, *viâ facti*, *vel viâ juris*. Replied, The debtor being necessitous, did uplift it, so that the appriser never attained possession of that

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 intromitters with the teinds; therefore they sustained the defence, and found him liable only for what he possessed. 2*do*, He alleged, I cannot pay you at the rate of £.60 yearly, because, by a decreet 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 decennalis 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.

1698. *December* 22. CATHCART *against* PATON.

No. 16.

A creditor having poinded 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 poinded 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.

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 decreet 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 decreet was charged on the teinds of the twenty-four merklands of Preston, which are now the property of Dr John Murray, extends to 440