

1716. July 5. GLENDONWYNE of Parton, against GORDON of Kirkland.

IN a declarator at Parton's instance, of his right to a piece of ground called the Parson's Isle, as part and pertinent of the barony of Parton, whereof, nevertheless, Kirkland and his authors had been in immemorial possession, but had only an old charter, but no sasine thereon; it was, among other things,

*Alleged* for the pursuer; That possession, though never so long continued, cannot make a right without a title, since the act 1617, anent prescription, requires charter and sasine, and 40 years peaceable possession, or sasines one or more continued upon retours or precepts of *clare constat* during that space; none of which the defender had produced.

*Answered* for the defender; That the land in controversy having been possessed by him and his authors, as part and pertinent of his lands of Kirkland, this immemorial possession, as in any case, it may establish part and pertinent; so especially ought it to have this influence in a question with respect to church-lands, (and such the Parson's Isle is, as appears by its very name and designation), which have a special privilege; so that, even by the act of sederunt 1612, the Lords declare they will decide all questions arising anent the right to church-lands by possessing for 40, at least for 30 years immediately preceding the entering of their actions. And it is observed by the Lord Stair, tit. Infestments of Property; (b. 2. tit. 3.) That 37 years possession before the reformation, or 13 years thereafter, without interruption, is sufficient to stand for a right of kirk lands.

*2do*, Though, in the common cases of prescription, sasines be required; yet, in the question of church-lands, where the rights are much more defective, any colourable title, joined with possession, should be sufficient; and here the defender had produced an unquestionable document, viz. a charter, though the original sasine be amissing, which must be presumed from the long continued possession, especially considering that it was before the act appointing registration of sasines, when possession was much more considered than the sasine, which was not at that time much in use to be given, as the Lord Stair observes out of Craig, tit. Infestments of Property, § 16.

THE LORDS found an immemorial possession relevant to continue the immemorial possessor in the possession, ay and while the pursuer produce a special right to the subject in debate. See POSSESSION.

Act. *Al. Fergusson.*

Alt. *Boswell.*

Clerk, *M'Kenzie.*

*Bruce, v. 2. No 12. p. 15.*

No 21.

A person having been in immemorial possession of a piece of ground, as part and pertinent of his estate, tho' without a special title, the Lords found an immemorial possession relevant to continue the possessor in possession, until a special right should be produced in favour of another.