

1724. June 10.

Mr GEORGE CRAWFURD, Minister of Stoniekirk, *against* JOHN MAXWELL of Ardwall.

THE parishes of Stoniekirk, Clashant, and Toscarton were, about the year 1618, united into one, under the Designation of the Parish of Stoniekirk. Mr Crawford, the present minister, insisted in an action of declarator of his right to the glebe of Toscarton against Ardwall; and in support of it produced the following writs.

*1mo*, A warrant from the Presbytery of Stranraer, in June 1649, to two of their number to repair to the glebe of Toscarton, and give possession thereof to Mr James Laurie, then minister at Stoniekirk.

*2do*, An instrument of a notary, bearing, That the ministers therein named, in virtue of the said power from the Presbytery, gave the minister of Stoniekirk possession state and sasine in the vicar's manse of Toscarton and glebe thereof.

*3tio*, A decret of suspension at the instance of the minister against Macculloch of Myreton, proprietor of the lands of Ardwall, who had suspended the minister's charge, upon this ground, That when the three parishes were united, the respective heritors collected money, and purchased a sufficient glebe adjacent to the manse of Stoniekirk; which fact was referred to the minister's oath, and he deponed *negative*.

*4to*, An instrument of possession, bearing, That Alexander Macculloch of Ardwall had given possession of the said glebe to the minister, dated 6th February 1650. And *lastly*, He produced a tack set by the minister to Alexander Macculloch, therein designed of Ardwall, which tack was for one year, and bore L. 5 Scots of money rent, and three pecks meal of Wigton measure; which the pursuer alleged the ministers of Stoniekirk had been in use to receive, though he himself had been disappointed of it in a former process.

It was *objected* by Ardwall, That the titles produced for the pursuer were not sufficient to found his declarator of property, or to compete with him a singular successor, who was not bound to know of any latent deeds or decreets taken out against his predecessors who happened to be obnoxious, and obliged to yield to the necessities of the times: That all those deeds were long ago prescribed, and that the pursuer himself could not pretend that ever he, or his predecessors in office, had been in possession since the year 1650; so that they were excluded by the negative prescription. *2do*, That the defender had possessed the ground in question upwards of forty years, by virtue of charter and sasine, without any interruption.

It was *answered* for the pursuer, That from the year 1650, which was the date of the tack, it must be presumed that the heritors of Ardwall retained the

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Found, that land which had been a glebe might be secured to the possessor by prescription, though neither he nor his authors were specially infest in it.

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possession by tacit relocation; and since the possession was begun in that manner, it could not be inverted and ascribed to any other title. As to the prescription founded on for the defender, it was *answered*, That, for any thing he had produced, he appeared to be no more than a naked possessor, and so could neither propone the negative nor positive prescription; for by his documents it appeared that the ground in controversy was a vicar's manse, and consequently a separate tenement from the lands of Ardwall, and could not be part and pertinent of them; and therefore no right to the manse could be acquired by forty years possession of the lands of Ardwall, because of the want of a title to found the prescription.

To all which it was *replied*, That tacit relocation could never be sustained, where there was no deed of possession for the space of forty years after expiring of the tack, from whence the tacit relocation was to proceed. *2do*, Tacit relocation does not take place betwixt the heir of the tacksman and the setter, till once it is acknowledged by mutual consent, *L. 14. D. locati.* *3tio*, In the present case, it would be absurd to pretend that the proprietor of Ardwall possessed by virtue of tacit relocation, since, in the year 1660, Episcopacy was established, by which all deeds flowing from Presbyterian ministers were effectually sopped; and neither Mr Laurie, when he was restored, nor his successor Mr Campbell, pretended any claim to this glebe. As to the defence of prescription, it was qualified in this manner, That the heritor of Ardwall had possessed the lands of Toscarton, whereof the ground in question was a part, for the space of forty years, by virtue of charter and sasine, before commencement of this process; and it was contended for him, that his title was good, since the ground lay locally within the barony; and though it was appropriate to a special use, yet when that use failed, it returned to belong to the barony.

"THE LORDS found, that the documents produced were sufficient to show that there was a separate glebe out of the lands of Ardwall to the separate parish of Toscarton: But found, that prescription might run, notwithstanding that the defender and his authors were not specially infeft in the said glebe."

Reporter, *Lord Newhall.*  
Clerk, *Dalrympie.*

Act. *Ja. Fergusson, sen.*

Alt. *And. Macdowal.*

*Edgar, p. 46.*

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Found, that a subtack of teinds granted to the heritor, though flow-

1746. July 2. *Muir of Caldwell against HERITORS of the Parish of Dunlop.*

THE parish of Dunlop is one of the many parishes the teinds of which belonged to the abbacy of Kilwinning; and about the time of the Reformation, when the practice was to give long tacks of teinds in place of heretable rights,