

No 204.

1737. *November 12.* MINISTER of DUNIPACE *against* LADY DUNIPACE.

IN a pursuit at a minister's instance against one of the heritors for a cow's grass, on this ground, that his predecessor serving the cure had enjoyed the same for thirteen years, a sufficient presumption that the same was upon a good title, the Ordinary had allowed the minister to prove his predecessor's possession, and the proof coming to be advised, it appeared proved, that the former incumbent had possessed the said cow's grass for thirteen years and upwards. It occurred to the Court, that after the Reformation many of the rights and securities of kirk-lands being lost in these troublesome times, it was necessary to presume the kirk-men's right from their possession; and for that end, thirteen years possession before the Reformation was fixed upon as sufficient. But as in process of time, to prove a party's possession so far back as thirteen years before the Reformation became by degrees impracticable, a new regulation was made by an act of sederunt, *anno 1612*, which see in Spotiswood page 190, where it is declared, "That in all time coming the Lords will decide all questions arising between parties anent the right of kirk-lands and livings pertaining to kirk-men, by their possession of the same kirk-lands and rents thereof for the space of forty, or at least thirty years, continually and immediately preceeding the intenting of their actions, or proponing their defences concerning their rights, when writs cannot be produced to verify the said lands &c. to have pertained to the kirk of before." On consideration of this act, and that the brocard did never relate to any thing but kirk-lands and livings, and nowise to a minister's horse and cow's grass, which had its original long since the Reformation, the LORDS assoilzied. See APPENDIX.

*Fol. Dic. v. 2. p. 114.*