

No 30.

Ten years possession of vicarage, found sufficient in a possessory action, though the cattle of which vicarage was claimed, were kept in a common locally within another parish, the minister of which claimed the same vicarage.

1630. February 2.

MINISTER of FALKLAND *against* MINISTER of STRATHMIGLO.

Two ministers, in a double poinding raised by certain parishioners of Strathmiglo, who had their goods pastured on the Lowmonds of Falkland, contending, who should be answered of the vicarage of these goods, which the minister of Falkland claimed as due to him, seeing Falkland and the Lowmonds lie within the parish of Falkland, and so all the goods pasturing thereupon, ought to pay vicarage to him; and the other minister *alleging*, That the vicars of Strathmiglo have been ten years in possession of receiving the vicarage teinds for their goods, which the parishioners of Strathmiglo were in use to pasture on the Lowmonds continually, without questioning thereof by the minister of Falkland. This use of payment was preferred in this possessory judgment, albeit the Lowmonds lie naturally within Falkland, the same being a great pasturage bounds, whereupon other parishioners pasture besides them of Falkland.

Act. Pitcairn.

Alt. Mowat.

Fol. Dic. v. 2. p. 90. Durie, p. 489.

No 31.

A minister of a parsonage possessing 14 acres of land, besides his glebe, for 18 years, as holden and reputed kirk-lands, was preferred *in possessorio* to one who offered to prove, that they had been formerly possessed as part of his lands, past memory of man.

1630. February 25.

MAXWELL *against* RODGER.

THE minister being provided to the parsonage of the kirk of ———, and in possession of twelve or fourteen acres of land at the said kirk, by and attour his glebe of four acres designed, from the which he was pursued to remove by the pursuer; and the minister *alleging*, that he was provided to the parsonage of that kirk, whereby he had right to the whole kirk-lands thereof; likeas, he was eighteen years in possession of the twelve acres acclaimed, which are and have been reputed kirk-land, by common estimation; and the pursuer *replied*, that this possession whereto the minister entered, was without order of law, the time of the Lord Maxwell's forfeiture, whom this pursuer followed; and that estimation whereby the same was alleged to be kirk-lands, was only proved by two witnesses, and could not be found enough to take away the same from the pursuer, which he alleged to be his heritage bruiked by him and his predecessors, past memory of man, as a part of his lands of ———, wherein he was infest, and his predecessors; and for which lands he alleged, he and they received yearly duty, past memory of man, there being no monument extant to qualify that it was kirk-lands, neither by foundation, charter, feu, tack, or rental, nor ever possessed by any kirk-man, or ever duty paid therefor to any kirkman; likeas, the same lyes contiguous to his said lands, wherein he is infest; and by the contrary, there is a strip betwixt the same and the minister's four acres of his glebe, whereby it appears, it has not been of before kirk-land; and he offered to prove, by an inquest of fifteen sworn gentlemen, that the same has ever been reputed land pertaining to him, and to his predecessors, and not to the kirk. This reply was rejected, and the exception admitted to probation, to the defender, in this judgment possessory.

Act. Cunningham & Lawrie.

Alt. Nicolson & Mowat.

Clerk, Gibson.

Fol. Dic. v. 2. p. 90. Durie, p. 494.