

SECT. IX.

Title requisite for carrying to a Subject a Right *inter regalia*.

1679. December 2. FARQUHARSON against EARL of ABOYNE.

DONALD FARQUHARSON being infest by the bishop of Aberdeen, in the kirk town of Birsh, with two fairs, pursues a declarator against the Earl of Aboyne, who had obtained infestment from the King, upon his own lands next adjacent, to be holden the same days with Farquharson's days of the fair, for declaring, that the said privilege of fairs was surreptitiously procured from the King, in prejudice of the pursuer's right; for Aboyne being a powerful man in the country, none could come to the pursuer's fairs, Aboyne having fairs on the same days *in vicinio*. The defender *alleged*, no process, because none can grant the privilege of markets and fairs, either in favour of himself, or the bishop his superior. It was *replied*, That the pursuer offers to prove immemorial, or 40 years possession of these fairs, by virtue of his and his predecessors infestments produced, so that his right is accomplished by prescription, and so cannot be quarrelled; but it is presumed, that the bishop of Aberdeen, or other churchmen to whom he succeeds, had right from the King, of the fairs, for whom 13 years possession would free him as a church-man from producing his title, and 40 years possession would exclude any other title.

THE LORDS found the reply relevant, and also found the pursuer's right relevant upon 40 years possession. See No 5. p. 4147.

Fol. Dic. v. 2. p. 108. Stair, v. 2. p. 714.

* * * Fountainhall reports this case:

FARQUHARSON against the Earl of Aboyne, who was infest by the bishop, and so it was *alleged*, That his charter could not give him the privilege of fairs, which is *inter regalia*; the bishop not having it himself from the King; the LORDS found 40 years possession supplied this, but did not sustain in this case *triennalis et decennalis possessio*.

Fountainhall, MS.

* * * A similar decision was pronounced, 22d December 1731, Tarbet against Bogle, with regard to a right of ferry-boat. See APPENDIX.

No 137.
Prescription
and 40 years
possession of
a fair on a
bishop's char-
ter was sus-
tained, tho'
no deed by
the King to
the bishop
granting that
fair was pro-
duced.