

possession ceased when the executors creditors' title came to be made up in the 1684 and 1685. Their suffering her to possess thereafter argued *post tanti temporis intervallum*, that they conveyed these moveables to her. Vindication of a parcel of nolt poinded was refused, though the pursuer offered to prove they were his, and set a grazing to the debtor; because the debtor had, some few years before the poinding, used all deeds of property upon them; during which time the pursuer had been out of possession, November 24. 1624, Turnbull *contra* Cavers, No 286. p. 11615.; June 17. 1625, Brown *contra* Hudilstoun, *vocc* SPUIZIE. The practique betwixt Hume and Pitcairn doth not alter the case; for no presumptive right within the years of prescription could take place against a plain contract of loan; but January 28. 1679, Hog *contra* Hamilton, No 9. p. 9119, the LORDS repelled possession by a relict, unless confirmation were instructed; consequently, *argumento e contrario*, twenty-eight years possession here after confirmation ought to be sustained.

No 310.

THE LORDS found the defender's long possession, since the year 1684, at which time the defender's wife's first husband's testament was confirmed, presumes a right thereto from the executors confirmed, and therefore assoilzied the defender.

*Fol. Dic. v. 2. p. 163. Forbes, p. 588.*

1734. July 30. CARSTAIRS of Radernie *against* STEWART of Dunearn.

No 311.

AN assignee to a liferent-right having been long in possession, was pursued to remove, upon the presumption that the liferentrix was dead, she not having been heard of for 60 or 70 years backward. The defender admitted, were he insisting for possession upon his liferent-right he must prove his libel, viz. the existence of the liferentrix. But he *contended*, That, having once legally attained possession, he has nothing further to prove; his possession must continue, and the person who brings a process of removing against him, must prove that the right is at an end by the death of the liferentrix; and therefore, though *in dubio* the presumption of 50 or 60 years might take place as the most ordinary period of life, the question here does not turn upon the preponderating presumption; the pursuer cannot prevail unless he prove his libel, which must be done one of two ways, either by a direct proof of death, or by the lapse of such a time, after which its past all human probability that the person is alive. THE LORDS found, That the pursuer not offering to prove the Lady's death, the presumption in law is for life to 100 years. See APPENDIX.