

1550. December 17.

A. against B.

No 9.

ALL summoundis of teindis, possessioun being libellit as ane part of the patrimonie of the benefice, it is sufficient to produce inhibitioun for verifying of the titill.

Balfour, (POSSESSION.) No 8. p. 149.

1559. June 27.

ALEXANDER FORBES of Pitsligo against ALEXANDER LESLIE of Wardis.

No 10.

Of possession of the servitude of casting of fuel.

GIF ony man callis and persewis ane uther for casting, leiding, or away-taking of peittis, or ony uther fewall, off ony landis or ground pertening to him in heritage, and the defendar alledge, that albeit he had castin and intromettit with the samin, he did na wrang, because he and his tenentis had bene of befoir, and zit is in possessioun of the samin ground, as part and pertinentis of uther landis pertening to him in heritage and devydit fra the persewaris landis be ane certane marche, be pasturing of gudis thairupon, and winning of fewall, and pointing of utheris coming thairon; the samin is relevant of the law, and a certane terme is assignit to baith the parties, viz. to the persewar for proving of his summoundis, and to the defender for proving of his allegeance.

Balfour, (POSSESSION.) No 7. p. 149.

1623, July 19.

MAXWELL against L. WESTRAW.

No 11.

Possession by a person forfeited.

IT was found by the LORDS in an action of removing, pursued at the instance of James Maxwell, donatar to the forfeiture of the last Lo. Maxwell, and who thereby was infest in certain of his lands, against the L. Westraw, that the trial prescribed by the act of Parliament in August 1584, anent the forfeited persons being in possession of the lands dispooned by the King, by the space of five years, might be deduced when liti-contestation was made in the cause; and that such trials and precognitions needed not to precede the intending of the action.

Act. Hope & Cunninghame.

Alt. Nicolson & Oliphant.

Clerk, Gibson.

Durie, p. 74.

1623. December 6.

— against CARMICHAEL.

No 12.

Possession of a part of lands held *pro indiviso*.

In an action pursued at the instance of ———— *contra* Carmichael of Pot-tishaw, to find caution to pay the duties contained in the tack set to him of an

No 12.

viso, by a title, bars summary removing from the other parts.

quarter of the lands of _____, or else to remove from the lands as if he had no tack, conform to the order usual in such causes; the LORDS found, That albeit the defender found no caution to pay the duty, yet that the conclusion of the summons ought not to be granted, viz. to decern him to remove therefrom, because the defender *alleged*, That he bruiked the pursuer's third part of the lands contained in the tack libelled, with the two parts pertaining to the Earl of Linlithgow *pro indiviso*, so that he could not know the third part thereof to remove therefrom: This allegiance was found relevant, albeit the pursuer *replied* that the defender ought not to be heard, to make that a pretence of his not removing, seeing he had become his tenant in his third part, and taken tack from him thereof, and paid him duty therefor, and so could obtrude nothing against his removing therefrom, being his own deed, which he could not misken; especially seeing he clothes not himself with any other right to the said third part, nor with any right to the other two parts; and therefore, with the more reason, he ought to give again the land which he received from the pursuer by virtue of the tack, and that it was not necessary to him to allege or prove against his own tenant, that the third was severally known from the two parts, which he should dispute when he had to do with the heritor, or any other except his own tenant; notwithstanding of the which answer, the exception was sustained, and the defender assolizied from the removing.

Clerk, Hay.

Durie, p. 88.

1630. July 2.

JOHN ROSS *against* The TOWN of PERTH.

No 13.

A comprising clad with possession, defends from wrongous intromission against a prior right.

IN a spuilzie at the instance of John Ross, he having right made to him by his father the Laird of Craigie, of the teinds of the kirk of Perth set to him during his lifetime, viz. "the father's lifetime, and thereafter for the space of two nineteen years tack to the heirs-male gotten of his own body, which failing, to their heirs-male whatsoever;" to the which tack the father, who was tacksman for his lifetime, *primo loco* as said is, made the said John assignee, with reservation of his own liferent, and accordingly retained the possession, he surviving divers years thereafter, after whose decease the right of the tack is comprised from his heirs-male by the Town of Perth, who, conform thereto, came in real possession of the teind-sheaves divers years; and the Town of Perth being convened for wrongous intromission, against which they opponing the tenor of the said principal tack, and their comprising, clad with real possession many years together, which they alleged should give them preference to the pursuer's anterior right which never took effect by any possession or intimation of his right, except only by executing of an inhibition twelve years since thereon, whereupon nothing more was prosecuted nor done by him *sinsyne*,