

POSSESSORY JUDGMENT.

SECT. I.

What title requisite.---What time requisite.---Connection of possession.

1628. *March 26.* MAXWELL of Cowhill, *against* PORTRACK.

IN an action betwixt Maxwell and Portrack, whereof mention is made 21st March 1628, *voce* SASINE, the LORDS found the defender's infeftment of his lands from the King's Majesty, of whom the same were holden *cum piscationibus in aqua de Nith*, with continual possession of fishing of salmon within the said water, by the defender and his predecessors, conform to their said infeftment, and use of debarring of all others from fishing of salmon therein, was sufficient, and sustained the same to defend the excipient in this removing, it being a possessory judgment against this pursuer, and his pursuit founded upon special right of the salmon fishing, disposed to him and his predecessors *per expressum*; and had no respect to the reply made by the pursuer, whereby he alleged, that salmon-fishings were *inter regalia*, and could not be comprehended under the general clause *cum piscationibus*, and that they were not disposed, except they were *specifice* and *per expressum* disposed; which reply was repelled, and the said exception sustained.

Fol. Dic. v. 2. p. 88. Durie, p. 371.

No 1.
Lands being disposed *cum piscationibus*, with continual possession of salmon-fishing, this found sufficient defence against removing, although it was alleged that salmon-fishing being *inter regalia*, could not be comprehended under the general clause, *cum piscationibus*.

1632. *December 7.*

STUART *against* LUNDIE.

ONE Stuart pursuing Sir James Lundie to remove from an husband-land in Eyemouth, holden of Coldinghame, conform to an infeftment, granted there-

No 2.
This reply of nullity against the defender's infeftment,

No 2.
that it was granted by a person whose right was reduced in Parliament, was received summarily in a removing, notwithstanding of 10 years possession.

of by John Stuart to the pursuer, to which John Stuart, Coldinghame was erected, and Sir James defending with an infeftment granted to him by the Earl of Hume, who was infeft upon the inhability of John Stuart, declared in Parliament, conform to a charge executed against him as superior by the said Sir James, who had comprised the said lands from Thomas Lumsdane, and conform thereto, he has been since ten years in possession of the said lands, which ought to maintain him in this judgment possessor;—this allegiance was summarily repelled in the same place, because of the reply underwritten, without necessity to reduce, because the infeftment alleged by the excipient was found summarily null, as said is, seeing the same was granted by the Earl of Hume, who, the time of the charge given him to receive the pursuer upon the alleged comprising, was not then superior, but only John Stuart the pursuer's author, in respect before the defender's infeftment from the Earl of Hume, the Earl of Hume's right was reduced in Parliament, and John Stuart declared to have the only right to that Abbacy to whom it was erected, and so the right being null, the ten years possession was not respected, and the exception was repelled.

Fol. Dic. v. 2. p. 88. Durie, p. 656.

No 3.
An apprising with infeftment is a good title for a possessory judgment.

1637. *March 13.*

FUIRD *against* STEVENSON.

ONE John Fuird pursuing removing against John Stevenson from an house in Kilkenny, who *alleging*, That he was infeft upon a comprising of that land *in anno* 1630; and was seised in October that year, and by virtue thereof had obtained decret against the tenants, and continually possessed since, which should defend him in this judgment possessor;—and the pursuer *replying*, That he had an anterior heritable right made to him by that person, from whom the defender comprised, before the defender's comprising, and which was granted to him for a preceding just debt, and had also thereupon obtained decret against the tenant of the land, so that he ought to be preferred, notwithstanding of the excipient's decret, whereby he ought not to be prejudged, who was not warned thereto, albeit he was standing infeft the time of the warning; the LORDS found the exception founded upon the defender's heritable right, and six years possession, relevant in this judgment possessory, notwithstanding of the reply, without prejudice to the pursuer to reduce upon the reason of anteriority of his right, or upon any other ground competent to him *prout de jure*.

Fol. Dic. v. 2. p. 88. Durie, p. 836.

No 4.
Possessory judgment not competent upon fewer than 7 years possession.

1661. *December 13.* JAMES HAMILTON *against* The TENANTS of OVERSHEILS.

JAMES HAMILTON merchant in Glasgow, having right to two apprisings of the lands of Oversheils, pursues the tenants for mails and duties, and after litiscon-