

infest in an annualrent, and hath been (by virtue thereof) more than seven years in possession, and so hath the benefit of a possessory judgment, till her right be reduced, and cannot be dispossessed by the old lady's posterior infestment.

No 45.

THE LORDS repelled both the defences, and found that an annualrent is *debitum fundi*, and is not excluded by possession of a posterior right, and needs no declarator, and that an annualrent hath not the benefit of a possessory judgment against a prior annualrent.

Fol. Dic. v. 2. p. 91. Stair, v. 1. p. 500.

1668. February 20.

FORBES against INNES.

No 46.

POSSESSORY judgment is not competent against a purchaser, who after eviction of the principal lands, recurs to the warrandice lands, unless the possession had been seven years after the eviction.

Fol. Dic. v. 2. p. 81.

* * This case is No 53. p. 1322, *voce* BASE INFESTMENT.

1668. July 15. EARL of WINTOUN against the TENANTS of LETTERFURY.

THE EARL of Wintoun being infest in the lands of Letterfury, which were comprised for Lady Seaton's tocher, did intent action for mails and duties against the tenants in anno 1656, and seven years thereafter did raise a wakening of the said summons, where this allegiance was proponed, That the Tenants had made payment to their masters, who had gotten feus of the said lands from Letterfury, and by virtue thereof had been seven years in peaceable possession. This allegiance was sustained, notwithstanding of this reply, that the feuar's possession was interrupted by the first summons, before they were seven years in possession; and being once interrupted, they could not have the benefit of a possessory judgment, by seven years possession after the interruption, especially seeing the pursuer was content to pass from the tenants, as having *bona fide* paid. 2do, It was replied, That the first summons was raised when the Earl of Wintoun was minor, and continued so the most part of the seven years, and therefore prescription could not run against him; which was likewise repelled: And LORDS found, that the benefit of a possessory judgment did run against minors as well as majors.

No 47.

Possessory judgment runs against minors. Minority is excepted only in the long prescription, extinguishing the right.

Gosford, MS. No 32.

* * Stair's report is No 15. p. 10627, Sect. 2. *h. t.*