

No 462. 1680. *January 13.* BROWN *against* TOWN of KIRKCUDBRIGHT.

IN a competition betwixt two parties about a salmon fishing, neither having an absolute right, but obliged both to recur to prescription, their mutual interruptions, before these rights were completed, were found to have no effect, unless upon interruption the party interrupted had intermitted his possession.

Fol. Dic. v. 2. p. 131. Stair.

. This case is No 110. p. 10845.

. A similar decision was pronounced 18th December 1623, Forbes against Monymusk, No 106. p. 10840.

1681. *July 1.* HUNTER of POLMUID *against* HAY of HAYSTOUN.

No 463.
Effect of possession in interrupting prescription.

HUNTER of Polmuid pursues Hay of Haystoun for obtaining a change of the holding for certain lands, from ward to feu, and the delivering of the pursuer's evidents, conform to a decreet-arbitral betwixt the pursuer and the defender's goodsir. The defender *alleged* absolvitor, because the decreet-arbitral was *in anno 1637*, and so all action thereupon is prescribed. It was *answered*, That prescription is always interrupted by possession, and the pursuer hath possessed the land, although he got no feu-infertment; yet certainly Haystoun hath had an obligment on the superior for it; for the superior received the feu-duty from the pursuer for many years; and if the defender had obtained a disposition or charter of the feu, his possessing thereby would exclude prescription. It was *replied* for the defender, That in this case the pursuer neither did, nor could possess, by virtue of the decreet-arbitral, but did possess by his own ward-right; but if the decreet-arbitral, or any obligment, had proceeded from the superior for a feu, his possession might be ascribed thereto, but not to a third party's obligment.

THE LORDS sustained the defence of prescription, in respect the possession could not be attributed to the decreet-arbitral; and found the obligment for delivery of the evidents by the decreet-arbitral was also prescribed; but not the obligation of delivery, if he had the writs, or fraudfully put the same away within these 40 years.

Stair, v. 2. p. 885.