

mon author upon his warrantice, to satisfy the distress, that he may continue to possess; and as to the *second*, they found, that one being infert in principal and warrantice, and in possession of the principal, no posterior right clad with natural possession, can pretend to the benefit of a possessory judgment against them, to force them to reduce, our law making no difference betwixt possession *fictione juris*, and that which is natural by uplifting of the mails and duties.

Gosford, MS. No. 786. p. 494.

No 51.

1683. January 17. CANT *against* AIKMAN.

A POSSESSORY judgment, was found not competent to a right of property against an annualrent right, being of another nature, compatible with a right of property.

Harcarse, Falconer.

No 52.

*** This case is No 23. p. 10633., & No 39. p. 10643.

1695. January 4. WALLACE *against* CAMPBELL.

PHILIPHAUGH reported Hugh Wallace of Ingliston *contra* Sir George Campbell of Cesnock. THE LORDS found Cesnock, though within year and day of Ingliston, could not claim the benefit of his infestment, till he paid the expenses of it; and that there was no possessory judgment of a prior apprising to exclude a second, where they were within year and day; but that, before citation or interpellation at the second appriser's instance, the rents uplifted by the first were *fructus bona fide percepti*, yet so as what he uplifted more than paid his annualrents was to be ascribed *in sortem*; but after citation, they behaved to communicate the rents proportionally effeiring to their sums, seeing law reputed them *tanquam jus individuum*. See this so decided 15th July 1675, Boyd *contra* Justice, No 50. p. 10650.

Fountainball, v. 1. p. 655.

No 53.

1739. December 21. SOMERVIL *against* AITKEN.

WHERE a defender called in an action of mails and duties before an Inferior Court is entitled to a possessory judgment, the inferior judge is judge-competent in that question; and therefore a pursuer of mails and duties, against

No 54.

No 54.

whom a possessory judgment was pleaded, having advocated his own cause on pretence of the competition of heritable rights, "The cause was remitted."

Kilkerran, (POSSESSORY JUDGMENT.) No 1. p. 413.

1766. January 17. M^cADAM *against* EARL OF GALLOWAY.

IN an action of mails and duties at the instance of an adjudger, a third party appearing and producing a sasine in the lands, contended, that he had the benefit of a possessory judgment, in virtue of his possession, for more than half a century on that title. *Answered*, A sasine without its warrant, cannot avail in a competition of real rights. But the LORDS sustained the defence, and assoilzied from the process of mails and duties, reserving to the pursuer to insist in a reduction of the defender's rights.

* * * This case is No 95. p. 2755.; *voce* COMPETENT.

See BASE INFERTMENT.

See Section 8th of the Title COMPETENT.

See Cranston *against* Wilkison, No 24. p. 4227.; *voce* FIAR.

See Pollock *against* Storie, No 51. p. 7216.; *voce* IRRITANCY.

See APPENDIX.