

1759.

 GORDON
v.
 GORDON.

For the appellant it was pleaded, That his Majesty, *jure coronæ*, is by law the original patron of all the benefices in Scotland. The crown can only be divested of this right by one of two ways; either by special grant from the king, or by forty years' uninterrupted possession following on a charter and sasine in favour of a subject. In the present case, no possession is alleged, and of consequence, the charter from Earl Douglas, on which the respondent's right is solely founded, can be no title, in competition with the crown. The right is returned to the crown by non-use, under the old charter, whereby the appellant has separately acquired a title by positive prescription, and uninterrupted possession.

Counsel were called in, and counsel appearing for the appellant (but none for the respondent), they were heard to state and argue the case on behalf of the appellant: and having prayed a reversal of the interlocutor complained of, they were directed to withdraw; and due consideration being had of what was offered, it was

Ordered and adjudged that the said interlocutor complained of in the said appeal be, and the same is, hereby reversed; and the interlocutor of the Lords of Session of the 27th June 1758, preferring the crown to the patronage be, and the same is hereby affirmed.

For Appellant, *C. Pratt, Ro. Dundas, C. Yorke.*

Note.—Lord (Chancellor) Hardwicke has this note on his appeal papers, “Reversed, the respondent making default. The Crown is great patron of all livings in Scotland, unless a title be shewn against the king.”

 [Mor. 6678.]

DUKE OF GORDON,	-	-	-	<i>Appellant;</i>
JOHN GORDON,	-	-	-	<i>Respondent.</i>

House of Lords, 21st March 1759.

PROOF—FRAUD—RELEVANCY.—General allegations of fraud are not relevant to go to proof.

IN this case (which see reported in Morison, p. 6678), it was held, in a reduction of a lease, that general allegations

of fraud in entering into the lease were not relevant to go to proof. The case was appealed.

1759.

After hearing counsel, it was

Ordered and adjudged that the interlocutor of the Court of Session be affirmed.

GOVAN
v.
SIMPSON.

For Appellant, *R. Dundas, C. Yorke.*

For Respondent, *Alex. Forrester, Al. Wedderburn.*

ALEXANDER GOVAN OF GIVAN, - - - *Appellant ;*

AGNES SIMPSON OF GOVAN - - - *Respondent.*

House of Lords, 26th March 1759.

POSSESSION ON AJUDICATION—REDEMPTION—HERITABLE CREDITOR—ASSIGNATION.—Held that though possession had followed on an adjudication, the legal of which was expired, but no infestment had followed, that the right was still redeemable, and that when such preferable heritable creditor gets possession of the estate, over which his own and other securities extend, a second creditor, who offers payment of the preferable debt so secured, is entitled to come in his place, and demand an assignation to his debt: also held, that this doctrine applied to a widow who had her liferent jointure secured over the estate, and that she was in the eye of law a creditor, entitled to such an assignation on offering payment.

By marriage articles between the respondent and her deceased husband John Govan, she was secured, in consideration of the portion she then brought her husband, in a liferent of one half the lands of Mains belonging to him. Subsequent thereto he engaged in trade, and contracted debt, among others to his brother Robert, to the amount of £388. 10s. 7d. chiefly secured by adjudication, but partly also by heritable bonds.

After John Govan's death in 1732, his brother, under his adjudications, entered into possession of the estate of Mains, and continued the same for 25 years, without the respondent, the deceased's widow, obtaining one fraction of her liferent jointure. In these circumstances, after the legal of the adjudication was expired, and after this possession had followed, she raised an action of mails and duties in 1751, founded on her liferent infestment, against the appellant. In defence, it was stated in bar of the action, that he possessed the lands by virtue of an heritable bond and infestment, granted by the respondent's husband, to which she consented, for 3000 merks, and also for another bond for 1400 merks, for which