

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-

testation, John Rollane writer compares for his interest and produces an apprising at his instance, with a charge against the superiors. It was *alleged* he could not be admitted in this state of the process. THE LORDS admitted him, in respect he craved no alteration to be in the litiscontestation, but concurred therein and craved preference to what should be found due thereby. The said John being admitted, *alleged*, He ought to be preferred, because he had charged the true immediate superior, whereas the other two apprisers had taken infeftment, as if the lands had holden immediately of the King. It was *answered* for James Hamilton, That he ought to be preferred, because he was infeft long before John Rollane, and supposing his infeftment were not of the immediate superior, yet being in possession by virtue thereof five or six years, he hath the benefit of a possessory judgment, and his infeftment cannot be taken away without reduction.

THE LORDS preferred John Rollane, and granted not the benefit of a possessory judgment without seven years possession.

Fol. Dic. v. 2. p. 88. Stair, v. 1. p. 69.

1662. January 25. KER of Littledean *against* PRINGLE of Stichel.

ANDREW KER of Littledean pursues a removing against Robert Pringle of Stichel, from the lands of LurgieCraig, as a part and pertinent of the lands of Newthorn. It was *excepted*, That the said lands were a part and pertinent of the the lands of Purdie's-Mill; and so bruiked by him, his authors and predecessors past memory; and which lands of Purdie's-Mill were acquired by a number of authors, who held the same of the house of Borthwick. This exception being admitted to probation, there were witnesses adduced, who proved, That the defender, his predecessors, and authors, had possessed the lands past forty years, as part and pertinent of Purdie's-Mill; but the infeftment produced by the defender, did not prove the lands to be holden of the Lord Borthwick, but of the Earl of Home. The time of the advising of the cause, it was *alleged* by the pursuer, That the allegiance was not proved, viz. that part thereof bearing, That the lands holds of the house of Borthwick. It was *answered*, That there was sufficient probation *ad victoriam causæ*; to wit, that the lands were possessed as part and pertinent of Purdie's-Mill; and it was superfluously *alleged*, and not profitable nor necessary to be proved, of whom holden. It was *replied*, That the pursuer finding the allegiance so strong, and knowing that he could not prove the samen as it was conceived, he suffered the same to be admitted to the defender's probation; whereas if it had been otherways, he would have taken him away with a reply, viz. that he would have offered him to have proved, That the defender's author, after that he was denuded of Purdie's-Mill, possessed LurgieCraig as tenant to the heritor of Newthorn: That there is a muir proper to Newthorn, interjected betwixt it and Purdie's-Mill: That it lies in a several parish; and that the pursuer's author acknowledged under his hand,

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Possession as part and pertinent for 40 years being proved, the defender in a removing, was assoilzied, and it was reserved to the pursuer to bring a declator of property.