

THE LORDS sustained the defence of a possessory judgment proponed for the Earl, reserving reduction, &c. as accords.

Act. Alex. Hay.

Alt. Ja. Graham, sen.

Clerk, Gibson.

Edgar, p. 86.

No 13.

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SECT. II.

What sort of possession requisite.

1664. July 22.

MONTGOMERY against HOME.

WILLIAM MONTGOMERY pursues Alexander Home to remove, who *alleged*, Absolvitor, because he stands infest, and by virtue thereof in seven years possession, and so hath the benefit of a possessory judgment. It was *replied*, That, before any such possession, a decret of removing was obtained against the defender, which made him *mala fide* possessor. It was *duplicated*, That since that decret, which was in absence, the defender had possessed it seven years without interruption, which acquired the benefit of a new possessory judgment; and *alleges*, that an interruption of possession ceases by seven years, albeit in the point of right, it ceases not till forty.

THE LORDS found the interruption stands for forty years, and that no possession thereafter, upon that same ground, could give a new possessory judgment, the possession being interrupted, not only by citation, but by a decret of removing, which stated the other party in civil possession.

*Fol. Dic. v. 2. p. 88. Stair, v. 1. p. 222.*

No 14.

After decree of removing, which stated the pursuer in the civil possession, the defender continuing to possess seven years without interruption, was not found to have the benefit of a new possessory judgment.

1668. July 15. EARL of WINTON against GORDON of Letterfury.

THE Earl of Winton having apprised certain lands in the North, pursues for mails and duties. It was *alleged* for Gordon of Letterfury, That he stands infest in these lands; and, by virtue of that infestment, is seven years in possession, and thereby has the benefit of a possessory judgment, and must enjoy the mails and duties till his right be reduced. The pursuer *answered*, That he had intented process upon his right for mails and duties *anno* 1658, whereby the matter became litigious, and which stops the course of any possessory judgment till that citation expire, by the course of 40 years, in the same way as it is in removings or ejections, where summons once intented does not prescribe by three years thereafter, but lasts for 40 years. The defender *answered*, That the case is not alike; for the benefit of a possessory judgment is introduced for the security of persons infest, that they be not summarily put to dispute their authors rights, which are oft-times not in their hands, but in the hands of their authors or superiors; and there was never any reply sustained against the same, unless it were vitious or violent, or interrupted; but here the last seven years

No 15.

A possessory judgment sustained on an infestment on a voluntary disposition, against an appriser who had denounced the lands before that disposition.

Citation has not such an effect as decree had in the case above.