

ed his author was infeft. THE LORDS having considered these practicks as not meeting directly with the case in question, they did determine by their interlocutor, that a tack clad with seven year's possession without any interruption, was a sufficient title to defend in an action for mails and duties, ay and while it were reduced, and so assoilzied the defender in this possessory judgment; but withall, declared the tenants liable for all mails and duties resting in their hands unpaid to the tacksman, and in time coming while the tack be reduced.

No 37.

Gosford, MS. No 912. p. 589.

1681. February 4.

ROBERTSON *against* ARBUTHNOT

MR THOMAS ROBERTSON, minister at Longside, having obtained decret against Arbuthnot of Carugal for the vicarage of his land, which being turned into a libel, the defender *alleged*, No process; because the pursuer had neither locality nor possession, and his presentation is limited to the possession of his predecessor. It was *answered*, That the pursuer hath sufficient title by his presentation, and is founded in *jure communi*, that *decimæ debentur parochæ*, either parsonage to a parson or vicarage to a vicar. THE LORDS sustained the pursuer's title. The defender further *alleged*, That these vicarage teinds were a part of the patrimony of the abbacy of Deer, erected in favours of the Earl of Marischal, from whom the defender and his predecessors had tacks for terms to run, and by virtue thereof have been seven years in possession, and thereby are secure till the tack be reduced, and have also been forty years in possession, and thereby all action against his tack is prescribed, albeit the setter had had no right, and cannot be questioned till the years of its endurance be ended.

No 38.
Found in conformity with Home against Scot, No 37. *supra*.

THE LORDS found both these defences relevant *separatim*.

Fol. Dic. v. 2. p. 90. Stair, v. 2. p. 855.

1683. January 17.

CANT *against* AIKMAN.

No 39.

CANT having pursued a poinding of the ground of the lands of Thurstane, for payment of an annualrent wherein he stood infeft; and Aikman having *alleged*, That he ought to have the benefit of a possessory judgment, being infeft in the property of the saids lands, and seven years in possession; the LORDS found, that a possessory judgment was only competent in the competition betwixt two rights of property; but that it was not competent to be proponed against a right of annualrent, that being a right of another nature, and which was compatible with a right of property and possession by virtue thereof: But

No 39.

whether the tenants should be any further liable than for what was in their hands the time of the citation, they ordained that to be heard in their own presence.

P. Falconer, No 44. p. 24.

*** Harcarse's report of this case is No 23. p. 10633, Sect. 3. *h. t.*

No 40.

1695. February 19. GRANT of Arndilly against LAW of Newton.

RANKIELER reported Grant of Arndilly *contra* LAW of Newton. THE LORDS found, *imo*, That an infeftment in multures, with seven years possession, gave not the benefit of a possessory judgment, being only a servitude, like an infeftment of annualrent; *2do*, That forty years possession was not sufficient, without some legal compulsitor, unless it were *in molendino regio*. But here they fixed on the contract that had passed betwixt the parties' predecessors in 1619, and decerned conform to the quantities therein contained.

Fol. Dic. v. 2. p. 91. Fountainhall, v. 1. p. 671.

No 41.

1698. January 26. STEWART against GRANT of Elchies.

In a process of abstracted multures, the defender having pleaded a possessory judgment upon a right to his lands *cum molendinis et multuris*, in consequence of which right he had a mill upon his own ground, and did grind his corns there above seven years; it was *answered*, That thirlage is *res incorporea*, no more capable of possession than annualrents or other *debita fundi*.—THE LORDS sustained the possessory judgment.

Fol. Dic. v. 2. p. 91. Fountainhall.

*** See the particulars of this case *voce* THIRLAGE.

1706. July 2.

HEPBURN against ROBERTSON.

No 42.
A tack of teinds held to have the benefit of a possessory judgment, as well as an infeftment, being a real right.

THE prioress of the nunnery of Haddington having set a tack of the teinds of the lands of Garvald and Nunraw to Patrick Hepburn, for sundry liferents and nineteen years, the right of this tack is assigned by Patrick Hepburn of Nunraw to John Hepburn, bailie of Swinton; and he pursuing for these teinds, compearance is made for George Robertson, who had adjudged the tack from Nunraw for his debt, and craved preference, as being seven years in possession by virtue of his adjudication, and so had the benefit of a possessory judgment.