

out of benefices and kirk-lands, not authorised with sentence or possession before the year 1587; the LORDS found, that either decret or possession of the pension ought to be alledged, (if it should be sustained) before that year 1587. And because the pensioner alleged his possession of a part of the pension out of the duties assigned of a term before that year, the same was sustained, and it was not found necessary to allege possession of the whole pension, and of more years before that year; and this possession of one part, viz. that one part of the feu-duties assigned for the pension was paid to him, was found probable by witnesses, without necessity to prove the same by discharges or writs; and also the feu-duties of the pensioner's own lands, being assigned to himself by the pension itself, in satisfaction of the pension *pro tanto*, his retention thereof in his own hands, was sustained as a sufficient possession; neither was it found necessary that the pensioner should be compelled to say, that he had possession of the whole pension before the year 1587; for the possession of one part thereof was found sufficient to sustain the pension for the whole, and to exclude the nullity objected by the acts of Parliament foresaid. See PROOF.

Act. *Advocatus & Nicolson.*Alt. *Stuart & Baird.*Clerk, *Scot.**Durie, p. 410.*

1629. July 9. URQUHART against E. CAITHNESS and DICK.

A PENSIONER to the Earl of Caithness having the duties of lands assigned in his pension to him; for satisfaction whereof, having obtained a decret and letters conform against the Earl, granter thereof, and against the tenants of the lands assigned, and conform thereto being diverse years in possession of the duties from the tenants; thereafter the lands being comprised from the heritor granter of the pension, which compriser was infest by public infestment, and in possession of the duties of these lands assigned, and he being convened by the pensioner for payment of the said duties to him the years intromitted with by the compriser; it was found, the said compriser was not holden to restore the same, and that the said pension being granted by a laick, and not by an ecclesiastical person, was not real, and did not affect the ground against a singular successor, but would only produce personal action or execution against the granter's self and his heirs, for the years since he was denuded of his heritable right by comprising and infestment.

Act. *Nicolson.*Alt. *Stuart.**Fol. Dic. v. 2. p. 55. Durie, p. 459.*