

No 21. debarring all others, and particularly the defender, by breaking his boats, &c. The defender's exception was not found relevant in this possessory judgment, and the pursuer's reply was admitted to probation, although it was *alleged*, that breaking of boats which of itself is an unlawful act, could not be looked upon as a lawful interruption.

Fol. Dic. v. 2. p. 89.

*** The case is reported by Durie, p. 220, as follows :

1626. July 18.—IN a removing pursued at the instance of the Lady Glogarnock *contra* Laird Kilbirnie, for removing from a loch; the defender comparing, and proponing an exception upon his particular infestment of the same loch, clad with 40 years possession, by all deeds of property, as fishing by net, wands and cobil, and all other lawful manner; this exception was not found relevant in this possessory judgment, to defend the excipient, but the same was *repelled*, in respect that the pursuer *replied*, upon her author's elder infestment of the loch libelled, long anterior to the excipient's right, and continual possession, not only by themselves, conform to their right thereof, but also that they were in use to debar all others from any fishing therein, and specially this same excipient, and also his father before him, in so far as the said pursuer's authors brake the boats which were put upon the said loch, by the excipient's father, and by himself since his father's decease; which reply was admitted to probation, albeit the excipient *alleged*, that the breaking of boats, which of itself was an act unlawful, could not be respected as a lawful interruption, for which the doer might be convened for a wrong and insolent riot, which reply nevertheless was sustained, as said is.

Act. ———.

Alt. *Belsbes.*

Clerk, *Scot.*

No 22.

A possessory judgment by tacks, or infestment of teinds, found to be interrupted by inhibition at the kirk door, within the first seven years.
See No 31.
p. 6427.

1673. December 11. HOME *against* The EARL of MARR.

THE Laird of Polwart having a tack of the teinds of Logie from the Prioress of North-Berwick, pursues for the profits of the teinds. It was *alleged* for the Earl of Marr, That, for his lands of Atray, his predecessors had tack from Queen Anne, as being a part of the abbacy of Dunfermline, and that he was infest in his lands of Grange, *cum decimis inclusis* by the King, *in anno* 1615; and that he bruiked, by virtue of these rights, for many years, and so had the benefit of a possessory judgment, and could not be quarrelled without a reduction or declarator for bygones, or in time coming. It was *answered*, That a possessory judgment can only be attained by peaceable possession, without interruption, and the pursuer and his predecessors had constantly interrupted, by using inhibitions. It was *replied*, That inhibitions were no legal interruption, unless citation had been used thereon, seeing they were only used at the kirk door against all and sundry; and albeit they might interrupt any posses-

tion flowing from the inhibitor, yet they had no effect as to another progress of right, neither flowing from the inhibitor nor his authors.

No 22.

THE LORDS found the interruption relevant by the inhibitions, unless before the inhibitions the defenders could instruct seven years peaceable possession, which giving the benefit of a possessory judgment, no posterior inhibition or citation thereon could take off.

The defender further *alleged*, Absolvitor, because he had the better right; for albeit the teinds of the parish of Logie were a part of the benefice of North Berwick, yet there may be teinds lying locally within the same parish, belonging to another benefice; and as to the right of divers benefices, both by the common law, and our custom, after the suppression of benefices, and the loss of their mortifications and rights, chief respect is had to what the benefice hath possest.

As to this point, the Lords granted a mutual probation to either parties to instruct, by the foundations, rentals, feus, or tacks, of the several benefices, and possession thereby, which benefice had the best right.

Fol. Dic. v. 2. p. 89. Stair, v. 2. p. 238.

1683. January. LUDOVICK CANT *against* ANDREW AICKMAN.

No 23.

THE LORDS found, that inhibition did not interrupt a possessory judgment of lands, though it might interrupt a possessory judgment of teinds, inhibition not being a possessory act, but a diligence; though it may be the ground of a petitory action or reduction, which will interrupt after citation or sentence, as the Lords see cause. *Item*, Found that possession, by virtue of an annualrent, did not afford the benefit of a possessory judgment, an annualrent being no title of possession. And found, that a possessory judgment could not be obtruded against a pointing of the ground on the annualrent, in respect a right of annualrent is consistent with a right of property.

Harcarse, (REMOVING.) No 837. p. 240.

*** See P. Falconer's report of this case, Section 5th, *b. t.*

S E C T. IV.

Effect of a Possessory Judgment.

1581. June. GLENHAM *against* DUNLOP.

No 24.
Long possession, with a habile title,

THE young Laird of Glen warned one Dunlop to flit and remove from a certain piece of land of the patrimony of the abbacy of K. It was answered by