

No 15.

possession, after that citation, is neither interrupted nor vitious; and these being no stop to take away the effect of that citation, it were of bad consequence, if persons infest 39 years after a citation behoved summarily to dispute their rights.

THE LORDS sustained the defence of the possessory judgment, upon seven years peaceable possession before the citation, and repelled the reply.

The pursuer further *replied*, That, in the seven years after the citation, there were some years wherein there was a surcease of justice, and no courts in Scotland; *2dly*, The citation was by his tutors and curators, and he was minor during the seven years. It was *answered*, That a possessory judgment was competent against minors, and there was no respect of minority therein, which is only excepted in the great prescription extinguishing the right; but in the possessory judgment, in relation to the way of process, and the fruits in the mean time, as in all prescriptions, *tempus continuum*, and not *tempus utile*, is respected.

THE LORDS also repelled both these replies, and, notwithstanding thereof, sustained the exception on the possessory judgment.

Fol. Dic. v. 2. p. 88. Stair, v. 1. p. 552.

* * * See Gosford's report of this case, Section 6th, *h. t.*

No 16.

Possessory judgment not competent, by obtaining decrees for seven years rent.

1672. January 25. HARPER against ARMOUR.

IN a competition betwixt Harper and Armour for mails and duties, the LORDS found, that civil possession, by obtaining two decreets for seven years rent, was not sufficient to give the benefit of a possessory judgment, which could only be effectual by the continuance of the possession seven years, either by labouring or lifting the duties, during that time.

Fol. Dic. v. 2. p. 89. Stair, v. 2. p. 55.

No 17.

Three years possession will not defend a singular successor against an action of intrusion, to make him liable for the ordinary duty, if his author's possession was *vi aut clam*.

1673. June 24. HUGH MAXWEL against ALEXANDER FERGUSON.

IN an action of intrusion pursued at the instance of the said Mr Hugh against Mr Alexander, as succeeding in the vice of his father, it being *alleged*, That the said action was prescribed, not being pursued within three years; and the defender ought to have the benefit of a possessory judgment, because that he offered to prove, that he stands infest in the lands of Isle, whereof the lands libelled are a part and pertinent. It was *replied*, That albeit the ejection may prescribe as to violent profits, and craving only retrocession, this pursuit ought to be sustained, and the defender cannot crave the benefit of a possessory judgment, because it is offered to be proved, that the pursuer and his authors, by virtue of their infestments of the saids lands, as a part of the barony of Dalswinton, were in peaceable possession of the saids lands, until the defender's father taking advantage at his own hand, without any process, did set down march-stones, and thereby included nine or ten acres of the pursuer's land,

There can be no benefit of