sion flowing from the inhibiter, yet they had no effect as to another progress of right, neither flowing from the inhibiter 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 poinding 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, *h. t.*

SECT. 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

No 24.
cannot be taken away by way of exception of nullity, but must be reduced.

the defender, That he had been in possession, by the space of 20 or 30 years, by virtue of a title and feu-charter, with precept of sasine following thereupon. To this was *answered*, That the author of the defender's title long before had made resignation of the right and title in favour of the pursuer's author, and so being denuded of the property of the said lands, could not thereafter make disposition to any other person; and so the feu-charter alleged by the defender was null of itself, given and made *a non habente potestatem*. To this was *answered*, That the defender's title, with so long continuance, and not interrupted, could not, however it was, be taken away by way of exception, but behoved to abide reduction. The matter being reasoned among the Lords, some were of that opinion, that the nullity of the title might come in by way of exception, according to act of Parliament, and the last practique admitted betwixt John Carnegy and one Gairne: *Alii Dominorum in contraria fuerunt opinione*, that the defender's title, with long possession following thereupon, could not be holden as null of itself, or null of the law, but behoved to be declared null, et differentia ponebant inter hoc quod est ipso jure nullum, et quod est decreto judicis annullandum argumento et similitudine sententiæ a judice latæ; nam si sententia contineat manifestam ineptitudinem, aut sit contra jus constitutionis, non opus est reductione, et est ipso jure nulla, ut habetur, C. Quando provocare non est necesse, L. 2. Secus si sic lata contra jus litigatoris et nullitas non fuerit manifesta ut in predicta, L. 2. The Lords, after long reasoning, for the most part, pronounced, that, in respect of long and continual possession, he ought not to flit and remove, the title standing unreduced. Dominus favorabiliorem existimabat rei causam propter longissimam temporis possessionem, licet de jure Scotiæ non admittitur præscriptio, nisi in casibus in actis Parliamenti expressum nominatis, tamen uti habetur longissimi temporis possessio 30 aut 40 annorum cum titulo justo, præscriptio procedit, et via actionis, et non exceptionis, jus litigantis tollitur.

Fol. Dic. v. 2. p. 89. Colvil, MS. p. 304.

No 25.
The Lords refused to receive a reason of reduction, nor would they receive the summons *incidenter*, against an heritable right, by virtue of which the defender had been seven years in possession.

1663. *January* 17. Pollock *against* Anderson.

The deceast John Anderson, by his second contract of marriage, is obliged to provide his conquest to the heirs of that marriage; and he conquests a room to himself in liferent, and William the eldest son of the first marriage in fee; whereupon they are both infeft by charter and sasine flowing from the Marquis of Douglas, from whom the land was purchased. The said John being debtor in a bond of L. 1000 to Arthur Pollock, who charged Christian Anderson to enter heir to her father William, who was successor *titulo lucrativo post contractum debitum* to his father John, in so far as the land was thereafter purchas-