

No 18.
was not law-
ful.

The long
prescription
excludes all
enquiry as to
the entry to
possess.

defender's father, to whom he succeeds, was tenant, and paid mail and duty for this meadow to the pursuer, his predecessors or authors, and therefore could not intervert his possession, and pretend the meadow to be part and pertinent of his own lands, at least the defender's tutor paid mail and duty therefor.

THE LORDS repelled the defence of a possessory judgment, in respect of the reply of interverting the pursuer's possession, by the defender's father having paid mail and duty to the pursuer, his predecessors or authors, but would not sustain it upon the tutor's payment, for though the long prescription excludes all question, as to the entry of the possession, yet the possession requisite for a possessory judgment must be lawful.

Fol. Dic. v. 2. p. 89. Stair, v. 2. p. 679.

1696. January 17.

MR GEORGE ANDERSON, Minister at Tarves *against* SIR ALEXANDER FORBES
of Tolquhoun.

No 19.
Where there
was a reduc-
tion of
a party's
right, though
in absence,
which behov-
ed to put him
in mala fide,
so that he
could not
have the bene-
fit of a posses-
sory judg-
ment, by pos-
sessing *de
novo*, after the
decree, he was
accordingly
not found
entitled to
the benefit of
a new posses-
sory judg-
ment.

His defence was, Absolvitor from bygones of the vicarage teinds, because I stand infest, and am seven years in possession, and so must have the benefit of a possessory judgment; *2do*, I have been *bona fide* possessor, by virtue of a right from Panmuir, Lord of the erection of Arbroath, and so *fructus perceptos et consumptos fecit suos*. *Answered*, His infestment can found no possessory judgment, being on a comprising led by a creditor of his father's against himself, as lawfully charged to enter heir, and who at random comprised teinds and all; so this gives no right, unless he instruct a right standing in his father's person to these teinds, antecedent to the comprising; *2do*, The seven years were interrupted by a decret of reduction of Tolquhoun's right to these tithes, obtained by Mr John Strachan, the minister's predecessor in that kirk; *3tio*, There were yearly inhibitions served at the kirk-door, which was sustained 23d January 1678, Duke of Lauderdale against The Earl of Tweeddale, No 31. p. 6427.—THE LORDS found Tolquhoun liable for the bygones since the minister's admission in 1683, as being sufficiently put *in mala fide* by Dr Strachan's decret of reduction, though it was in absence; and that being so interrupted, he could not prescribe judgment by seven years new possession again, as was found by the Lords, 22d July 1664, Montgomery *contra* Home, No 14. p. 10627.; but did not think the inhibition of teinds (though sufficient to stop tacit relocation) was enough *inducere malam fidem*, being general against all and sundry, and neither executed personally nor at one's dwelling-house.

Fol. Dic. v. 2. p. 88. Fountainhall, v. 1. p. 701.

No 20.
To acquire
the benefit of
a possessory
judgement

1698. December 15. COUNTESS OF DUNFERMLINE *against* LORD PITMEDDEN.

IN the debate betwixt the Countess of Dunfermline and the Lord Pitmedden, my Lady craved to be preferred to bygones, because she had the benefit