

No 26.

1716. July 5. GLENDINNING against GORDON.

IMMEMORIAL possession by a charter, though without a sasine, found relevant to continue possession, until the pursuer produced a sufficient right to the subject in debate.

Fol. Dic. v. 2. p. 88. Bruce.

*** This case is No 21. p. 9643, *voce* PART and PERTINENT.

No 27.

1749. July 5. CLEUGHTON and SELLER, Competing.

IT is a maxim in law, that *nemo potest mutare causam suæ possessionis*; that none can change the title of his possession by his own deed. But this was found not to apply to the case where William Seller's author had entered into possession upon an adjudication; and having discovered a defect in it, had deduced a new adjudication on the same ground of debt; and to which he now, in the competition with Cleughton, ascribed his possession; for that was not understood to be a changing the title of his possession.

Kilkerran, (POSSESSION.) No 1. p. 578.

1773. February 12.

JOHN SINCLAIR of Ulbster, and his Curators, and Others, *against* JOHN SUTHERLAND of Wester, and Others.

No 28.

Possession of a privilege cannot be summarily inverted; and the minority of the person exercising the privilege, which was that of approving the leets of Provost and Bailies for a royal burgh, is no good objection.

A COMPLAINT was presented by Mr Sinclair of Ulbster, and his Curators, on a recital of Ulbster's privilege of superintendency, (No 18. p. 163.) and setting forth, that a leet for the election of Provost and Bailies for the burgh of Wick, was, previously to the last Michaelmas, in due time presented to, and approved of, by Mr Sinclair of Ulbster, and his curators; that, upon the fore-said leets being presented, the minutes of election bear, 'Compeared John Sutherland of Wester, in name of himself, and the other burgesses in the town; and represented, that, for some considerable time past, the family of Ulbster had, without any authority or just title, assumed a negative on the election of Magistrates of the said burgh, by over-persuading the Magistrates to present a leet to Ulbster for his approbation, pretending, that, without such approbation, no Magistrate could be chosen; which was disconform to the charter of erection in 1589, and inconsistent with the liberties of a royal burgh.' And, as Ulbster's privilege had been infringed on this occasion, praying, to reduce and make void the election that ensued, and to declare Mr Sinclair of Harpsdale to be the Provost duly elected, who was in Ulbster's leet for that office; and although he had fewer votes than Wester, who was not in said leet, was alone validly elected.

Upon advising the complaint, with answers, &c. "the LORDS find, in respect the family of Ulbster have been in possession of approving the leets of Provost and Bailies for the burgh of Wick, that the election of the respondent John Sutherland as Provost of Wick is void and null; and find, that James Sinclair of Harpsdale was duly elected Provost of the said burgh; and decern accordingly." And, upon a reclaiming petition and answers, "adhered."

Act. Sol. General, J. Boswell. Alt. Ilay Campbell, M^r Laurin, Crosbie. Clerk, Pringle.

Fol. Dic. v. 4. p. 86. Fac. Col. No 57. p. 142.

1777. February 7. CARNEGIE against MAGISTRATES of MONTROSE.

FULLARTON of Kinnaber, in 1663, let in lease to the town of Montrose 'the salmon-fishings on the sands and sea-shore from the mouth of the water of South Esk, northward till it came opposite a march-stone on the links, for 19 years, for payment of two shillings Scots, if required.' And the town possessed the said fishings from that period, letting them in lease by public roup, &c. without paying themselves any tack-duty. Carnegie having acquired the land of Kinnaber, pursued a removing against the town from these fishings; and it was urged in defence, That by charter from David II. the town held right to 'piscaria infra aquas de Northesk et Southesk.' And as the fishings in question were clearly comprehended under that description, so the immemorial possession which the town had enjoyed, must be ascribed to that ancient grant, and not to a lease which had proceeded on some mistaken idea of a right in the lessor; but which they had never acknowledged by the payment of any rent. Answered for Carnegie, That his authors stood infeft in this fishing *per expressum* under charters from the Crown as far back as 1592; and that the acceptance of the lease by the town of those specific fishings contained in his charters, was conclusive evidence against the present plea. They had possessed on that lease ever since it was granted, and cannot now ascribe their possession to any other title. THE LORDS decerned in the removing. See APPENDIX.

Fol. Dic. v. 4. p. 87.

1793. February 26.

The CREDITORS of John Jackson, and HARRIET PYE ESTEN, against STEPHEN KEMBLE.

By 10th Geo. II. chap. 28. § 5. it is enacted, That no person shall be authorised 'by letters-patent from his Majesty, or the licence of the Lord Chamberlain,' to exhibit theatrical entertainments; except within the liberties of Westminster, or the actual residence of his Majesty.

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Prima facie evidence of right to an exclusive privilege, held