

is held and reputed possession in Law. Such, ~~as is called~~ legal possession is called civil possession because introduced by the civil Law, upon the Account that Men could not sometimes attain to the natural or corporal Possession for completing their Rights; or because it is joined to the Right, which the Law gives to possess as Master, whether he have likewise the natural Detent in his own Hands, or whether he possess it by the Hands of another. There are several Sorts and Degrees of civil Possession according as it approaches to the natural Possession. As 1^o the obtaining a Decree of Mails and Duties or causing Citation upon an heretable Bond. Mc Kenzie Inst. Lib. 2. Tit. 7. §. 7. 2^o Receiving Payment of an Annuelrent from the Debtor in an Infeftment of Annuelrent, &c. And where such Infeftment affects Lands, even in different Shires, Payment of Annuelrent from the Tenants of either of these Lands, is understood Possession thereof out of both, tho' these distinct & various Lands be not united by Union Charter 6 Novemb. 1678. D. Mc Kenzie contra Hay. Yea Possession ^{any} an Infeftment of Annuelrent corroborated a former granted out of other Lands, hath been sustained as Possession upon the first principal Infeftment 9 July 1668. Alexander contra Clackmannan 3^o Where a Man is seized in Lands, and for Warrandice of these infeft in other Lands at one and the same Time; Possession of the principal Lands, is reputed Possession of the Warrandice Lands 9 January 1666. Brown contra Scot. But 'tis doubted if the Rule will hold as to Infeftments of Warrandice given at intervall or some Time after Infeftment was taken in the principal Lands. Mc Kenzie Observ. on Act. 105. (D. 7. §. 5. Yea it may be argued against sustaining Possession of the principal Lands, as Possession of the Warrandice Lands in any Case; that where Infeftment of Lands in Warrandice is granted to one, and Infeftment thereof to another clothed with Possession, there would be two Possessors by distinct Rights having no Subordination or Dependence one upon another, albeit there cannot be possessio more than dominiumduorum in solidum. It is that the general Rule laid down by Sr George Mc Kenzie Inst. lib. 2. Tit. 7. §. 9. that if a Man be seized in Lands, and for Warrandice of these Lands be infeft in other Lands, Possession of the principal Lands is reputed Possession of the Warrandice Lands; seems to want a Voucher. Infeftment of Relief is not sufficiently clothed with Possession, by Payment of Annuelrent to the Creditor of the Debt for which the Relief was granted 26 June 1677. Ingles contra Tenants of Eastbarns 1 July 1691. Creditors of Cockburn competing. As Infeftment of Warrandice is, fictio juris by Possession of the principal Lands upon Infeftment given simul et semel with the Infeftment of Warrandice. The Reasons of the Difference are 1^o Payment

to a Creditor, can no more cloath the Cautioner's Relief with Possession than Diligence by the Creditor could do it. 2^o Infeftments of Warrandice are more favourable than Infeftments of Relief. For the latter relate, and oftentimes generally, to all Debts or Cautionries contracted or to be contracted; and such Debts, the relief may be kept up and made use of to support the Infeftment of Relief; whereas no Man is supposed to quit his principal Lands by collusion to establish a Right of Warrandice. 3^o If a Woman be infeft by her Husband in Liferent, the Husband's Possession, Mc Kenzie Ibid. §. 10. Not only is favourable to her, but also because she cannot possess while her Husband lives. But in a Competition between a Wife and a Husband's lawful Creditors, we must distinguish an Infeftment granted to her upon her Contract of Marriage, or in lieu thereof, from an Infeftment for an additional jointure, to a Wife competently provided by her Contract of Marriage: the Husband's Possession in that Case is reckoned the Wife's Possession as to her principal, but not as to her additional jointure, which being a gratuitous and voluntary Deed cannot wrong the grantors Creditors 7 December 1664. Lady Craivie contra her Husband contra L. Lorie 21 Feb. 1672. Reid contra Countess of Dundee. In so far as concerning a Wife's principal jointure Infeftment, the Husband's Possession of the Property, is accounted her Possession eminenter of an Annuelrent forth thereof, as jus ignobilium, even in Competition with another Annuelrenter deriving Right from the Husband common Author to both 23 Novemb. 1664. Misset contra Murray. Not only the Husband's Possession by himself, but even by any deriving a temporary or redeemable Right, as Liferents, Wadsets, and unexpired Apprisings, from him or his Authors, is understood to be his Wife's Possession 10 July 1667. Lady Burgoyne contra Tenants and Prachan 21 Feb. 1672. Reid contra Countess of Dundee. Facs granted to Wives to take present Effect might be supported and made effectual against singular Successors by the Husband's Possession. But a Facs of a Tenement within Burgh granted by a Man to his Wife, for her Lifetime, bearing the Entry to be at the Husband's Death, was excluded by an Infeftment of Wadset granted to another by the Husband after the Facs. Because such a Facs could not be clothed with Possession during the Husband's Life, and being latent could not be known to Creditors or singular Successors: albeit the Facs was given in place of a Wadset, provided to the Wife, and redeemed after the Marriage, and tho' by Custom of the Burgh Infeftment could not be granted to Wives but only to Men Burghers 24 Feb. 1676. Cullen contra J. of Aberdeen. But the Husband's Possession is accounted the Wife's Possession as to Infeftment granted to her in her Contract