

Contract of Marriage for her Lifetime, which takes Effect only after her Husband's Death: because Investments which, <sup>have</sup> a symbolical Possession are valid from the Date of the Registration vid. 7 Feb. 1673 *Birnet contra Frazer*.  
 5<sup>o</sup> Possession of a Life-rentor by Reservation, is reckoned the Fians Possession *McKenzie* lib. 5. ii. But a lease Investment granted by a Father to his own Son, was not clothed with Possession by the Father's Possession as a Life-rentor by Reservation 26 June 1634 *Brice contra Dury*. Tho' such a Reservation would cloath a lease Investment granted by the Father to his lawful Creditor. *McKenzie* lib. 6. When a Wadset is granted to the grantor of a Wadset a Back-Sack of the Lands disposed, for a Sack-Duty equivalent to the Annual-rent of the Money for which the Wadset is granted; he the Wadsetter by receiving Payment of the Sack-Duty is said to possess the wadset Lands per constitutum; called in the civil Law *constitutum possessorium*; because *constituit se possidere*, and the true Owner of the Land becomes a Tenant possessing nomine alieno. Which Possession by the Reverter is reckoned the Wadsettor's Possession 19 June 1713 *Murray of Burchtown contra McLean of Barclay*. Possession by Virtue of a subaltern Right from another, is ascribed to the grantor's Title: as a Wadsettor's Possession is accounted the Reverter's Possession. *Sir George McKenzie* (Observ. on Act 105. Par. 7. §. 5.) call Possession by a Husband or Father or Disposer, Possession per constitutum, which is not favourable in a Competition with other Creditors.

Possession is either lawful, that is, fair and honest, or unlawful. A lawful Possessor is he who is truly Master of the Thing which he possesses; a Possessor bona fide with a good Conscience, who has just Cause to believe that he is so, being ignorant of another's Right l. 109. ff. de verb. signif. altho in Eff. he is not Owner of the Thing he possesses: as the Buyer of another's Goods from a Person he thinks they belong to. An unlawful Possessor, is he who possesses mala fide; that is, possess as a Thing as his own when he knows very well, either that he has no Title at all to it, or that his Title thereto is vicious and defective. Mala fide or knavish Possession, is either by Force, or clandestine, or precarious, or momentary.

Clandestine Possession, is when one foreseeing that the Right he has will be disputed, and fearing least he should be hindered from taking Possession of the controverted Subject, finds an Opportunity of getting into Possession surreptitiously without the Knowledge of the Person from whom he expects the Opposition l. 6. pr. ff. de acquir. vel amit. poss.

Precarious

Precarious Possession, is that which is obtained by ones praying the Master to let him have it.

It is not so certain what Possession is to be accounted momentary. But short Time will suffice in Moveables, and longer Time as a Year or there by is required to make lawful Possession of Lands. *Stat. lib. 2. Tit. 1. §. 24.*

## Chap. 2.

How Possession is attained and lost or interrupted.

### Tit. 1.

How Possession is attained; or the Ways of entering and getting into Possession; and of having a Thing in one's Power to use it, to enjoy it, and to dispose of it.

Possession is attained, both by and without Delivery. Delivery, is that which makes a Thing pass out of the Power of one into that of another. The Formality of Delivery is required, to prevent rash Alienations, and oblige Men to act with some Deliberation. This Act of taking Possession is performed with certain Formalities, whereby a Person is justified to be in the Possession of any Thing. He who gets the last Right with the first Delivery is said to be formed by ~~the~~ Law. Delivery is either real, or symbolical, or feigned.  
 Real or true Delivery, is when a moveable Thing is given by the Hand to another; or when one is brought into Possession of what is immovable, by the Owner or his Proxy. Symbolical Delivery, is either when Possession of a Thing present, is given by the Delivery of some Symbol or Token which is a Part of it; as Land by Earth and Stone, a Mine by the Clap thereof, an Annual-rent by a penny, Parsonage Tithes by a Sheaf of Corn, a Flock of Sheep by one of the Number, household Pleasantry or Goods in a Shop, &c. by some Part of these Moveables. Or when Possession is given by some Symbol, which is no Part of the Thing to be possessed, but only represents it; as a Fishing by a Net, an Office by a Copy or Scroll and Resignation by a Pen, called Staff and Baston. Upon which symbolical Delivery an Instrument does to be taken in the Hands of a Notary-publick, and given out by him to the Party, called an Instrument of Possession. Feigned or Imaginary Delivery, is when without any corporeal Act, Delivery is supposed, from the Intention and Sufferance of the Owner: as when Goods in ones Possession as a Pledge or Loan, are