

1684. DRUM *against* COLTNESS, and LADY GOOTERS.

No 36.

FOUND, that a right of reversion of a wadset did not prescribe for not being used for 40 years, the subject not being *juris*, but *facultatis cui non præscribitur*. Here the reversion was *incorporatio in græmio* of the wadset; and the case had been the same, though the reversion had been on a paper apart, unless the right had been conceived in irredeemable terms, and had passed to singular successors.

*Harcarse*, (PRESCRIPTION.) No 771. p. 219.

1697. January 15. TURNBULL *against* HUSBAND.

No 37.

*Donatio inter virum et uxorem* may be revoked at any time, and suffers not the negative prescription.

TURNBULL had granted a bond to Christian Grimman, his wife, her heirs and executors, for 1700 merks, *stante matrimonio*. She assigns this bond. The assignees charging, he suspends, on this reason, that it was *donatio inter virum et uxorem*, and revocable, and *de facto* by him revoked; 2do, The assignation was null, being granted by his wife *viro vestita*, without his consenting thereto; 3tio, Prior to the intimation she had discharged the bond. *Answered* to the 1st, The bond, bearing date in 1653, and he not revoking the same till 1653, after 42 years, his faculty of revocation was prescribed; 2do, The assignation needed not his consent, for it cannot be presumed he would consent to an assignation against himself; 3tio, She could not discharge, because it was provided to her heirs and executors, and not to herself. *Replied*, Such donations are never confirmed *nisi morte concedentis*, and therefore his revoking was *actus meræ facultatis*, which he might exercise any time; and if his faculty was prescribed, then the bond was also prescribed.—THE LORDS sustained the husband's revocation, and suspended the letters, and assoilzied him from the bond.

Reporter, *Crocerig*.

*Fol. Dic. v. 2. p. 98. Fountainball, v. 1. p. 756*

1704. July 4.

ANTHONY and ZEROBABEL HAIGUES, elder and younger of Bimmerside, *against* THOMAS HALYBURTON of Newmains.

No 38.

Power being given to a party to build a mill on his own ground,

THE commendator of Dryburgh, by his charter in 1562, feus his abbey-mill, with the multures of the hail lands and teinds of the parish of Myreton, within which it lies, to which mill Newmains has right by progress. The lands