

1675. July 14.

KING'S COLLEGE of Aberdeen *against* EARL of NORTHESK.

PRESCRIPTION runs against colleges and universities, since the act touching prescription makes no exceptions.

No 348.

Fol. Dic. v. 2. p. 122. Stair, Gosford.

*** This case is No .63 p. 7230.

1695. December 19.

THOMAS FISHER and the ADMINISTRATORS of HERIOT'S HOSPITAL *against* HEBBURN.

THE LORDS having found, upon the 29th December 1691*, that Heriot's Hospital, being founded for orphans and minors, prescription could not run against them, they now reponed the other party against this interlocutor, there being as yet no definitive sentence in the cause to make a *res judicata*; and found, that the minority, sufficient to elide prescription, was only that species of minority, that runs out and terminates at the age of 21, which is not the case of Heriot's Hospital (nor indeed of any *orphanotrophium*) which never expires, the boys being always turned out at their age of 16, whereby it is a succession of perpetual minors; and found this Hospital not within the exception of the act of Parliament 1617, touching prescription, which is *stricti juris*, and not to be extended, especially *ad casus insolitos et incogitatos*.

No 349.

Fol. Dic. v. 2. p. 122. Fountainhall.

*** This case is No 82. p. 10786.

1701. July 11. LADY EDINGLASSIE *against* LD of POWRIE.

THE act 13th parl. 1617, does not expressly except minority from the vicennial prescription of a service as heir; yet found, that it must be deducted from the 20 years of prescription.

No 350.

Fol. Dic. v. 2. p. 122. Fountainhall.

*** This case is No 186. p. 10987.

1707. December 9.

The MAGISTRATES of Aberdeen, and Others, *against* JOHN IRVINE of Kincaussie.

THE Magistrates of Aberdeen, and Others, standing infest as patrons and administrators of the salmon fishing of the barony of Murtle, on the north

No 351.
Prescription found to run against a mortification for maintaining bursars.

* See Stair, B. 2. Tit. 12. § 18.

No 351. side of the Water Dee, mortified by Katharine Rolland, relict of Dr William Guild, to certain bursars and scholars, pursued an action of molestation and declarator against John Irvine of Kincaussie; for declaring the property, and that Kincaussie might be decerned to desist from molesting them therein, or drawing or drying his nets on a place called the Hollens.

Alleged for Kincaussie; That he had prescribed a right by 40 years possession of fishing along the Hollens, and drying his nets thereon.

Replied for the Magistrates; That prescription could not run against the right of mortification to pious uses; as was decided betwixt Heriot's Hospital and Hepburn of Beirfoord. Stair's Instit. lib. 2. tit. 12. § 18.

Duplied for Kincaussie; The interlocutor in favours of Heriot's Hospital, was recalled upon a hearing in presence, and the decret went out in the 1695, in favours of Beirfoord, finding that prescription might run against the Hospital, the administrators and trustees being majors, (No 349.) But then, the pursuers are not in the case of Heriot's Hospital, which is founded in favours of minors; for, the bursars of their foundation may be, and often are majors; and the patrons being infest in the fishing mortified, prescription runs against them, without regard to the design of the mortification; and June 30th 1671, the Beadmen of Magdalen's Chapel against Drysdale, No 347. p. 11148., prescription was found to run against pious mortifications.

THE LORDS repelled the objection against prescription, viz. that the fishing belonging to the pursuers is mortified for maintaining of bursars.

Fol. Dic. v. 2. p. 122. Forbes, p. 206.

1709. *January 26.*

ANDREW BROWN of Braid, and his Curators, *against* JOHN BRODIE Coachman.

No 352.

Prescription of a brewers accompt of ale, as to the manner of proof by witnesses, found to run against minors as well as others.

IN the action at the instance of Braid, and his Curators, against John Brodie, for payment of an accompt of ale furnished to the defender, by the pursuer's father, extending to L. 360 Scots; the said accompt was found prescribed *quoad modum probandi*, by the act 83d Parliament 6th James VI. notwithstanding the pursuer's minority; in respect, the said law doth not except minors, as they are excepted from some other short prescriptions; and minors have not that prejudice by the short prescription, which cuts off the manner of probation only, as by the long prescription which *funditus* extinguisheth the debt.

Fol. Dic. v. 2. p. 123. Forbes, p. 311.

. Fountainhall reports this case:

1709. *January 27.*—JOHN BRODIE is pursued by Brown of Braid, for an account of ale furnished to him many years ago. *Alleged*, It is prescribed, *quoad*