was fair and lawful to have prevented the currency of prescription by any means. NO. 1.

Pleaded for the defender: The exception of minorities is rested on the deed 1688. Latent family deeds set up as grounds for interrupting prescription, have ever been suspected and viewed with the most jealous eye. There is no record from which minorities can be discovered, or to which creditors or purchasers can have recourse. Minority, therefore, supposing it applicable to the positive prescription, is a plea of the most dangerous consequence to the security of land-owners in Scotland, who, in all other cases, can see the full state of the title from the established records, upon the faith of which all transactions respecting real rights proceed. And accordingly, in every case where minorities have been pleaded, the most liberal construction has been given to the salutary statute of prescription against latent family deeds brought forward to interrupt it. If the deed now founded upon was truly granted of the date it is made to bear, which there is much reason to suspect, the law will not presume that it was delivered by the father, and put out of his own power to alter or recall it; the deed being from a father to his infant son, the presumption is, that it remained in the keeping, and under the power of the father. The minority of Hugh, therefore, cannot be admitted as an interruption to the prescription.

The Court pronounced an interlocutor, finding, "That the minority of "Hugh, the son of John the second, is to be deducted from the years of pre-"scription pleaded on." But this interlocutor they afterwards altered, and found that the minority was not to be deducted.

This last judgment was affirmed upon appeal.

Lord Ordinary, *Auchinleck*. Act. *Ilay Campbell*. Alt. Dean of Faculty (*Dundas*.)

J. W.

1776. *July* 5. Poor JOHN ROBERTSON *against* JANET ROBERTSON.

NO. 2.
How far an action brought by a person in his own right, will interrupt the negative prescription of the same claim which might have

IN 1763, an action was brought by John Robertson against Janet Robertson, as representing her father Donald, who was the eldest son by the first marriage of Paul Robertson of Pittagown, grandfather to both parties, for payment of 1000 merks provided by the marriage-contract of his second wife, the mother of the pursuer, to the heirs male or female of the said marriage The Court (23d July 1766) found the pursuer entitled only to one-third of these thousand merks, as there were also two other children of the marriage.

NO. 2.

been competent to him in the right of another? See No. 449. p. 11283.

The pursuer having obtained right to another third of the thousand merks in right of his sister Grizel, by virtue of a discharge and assignation from her, dated on the 13th March 1773, ten years after the action had commenced, enrolled the cause before the Ordinary, to obtain decree to that extent. Prescription having been objected on the part of Janet Robertson, as much more than forty years had elapsed from the 1725, when this sum became payable to Grizel, and the 1773, the date of her discharge and assignation to the pursuer; the Lord Ordinary found, that prescription as to Grizel Robertson's third was not run at the date of citation to this process, 1763, and therefore repelled the defence of prescription.

In a reclaiming petition on the part of Janet, it was pleaded, That the action brought by the pursuer in the 1763, is entirely founded upon the pursuer's own right to the whole thousand merks, as heir-male of the marriage; and he does not in that action claim in right of Grizel, or of Marjory, the other children of the marriage. That, therefore, as no claim was made on the part of Grizel until the 1773, her right was in every respect prescribed. That as she was cut out from making this claim herself, so was the pursuer in her right, as *Nemo plus juris in alium transferre potest quam ipse habet.* That by the decisions upon the statutes 1469 and 1474, it is established, that interruption by an action brought upon one title, could not avail even the same person, when he afterwards found it necessary to plead upon a different title to the same subject, 29th November 1683, Hume *against* Hume, No. 420. p. 11241, and 6th December 1735, Blair *against* Sutherland, No. 438, p. 11270. And as it hath been established by repeated decisions, that citations on blank summonses do not interrupt prescription, because no particular debt or claim is there founded on, so can no summons interrupt the prescription beyond the particular claim or right therein libelled. That even supposing that the pursuer had actually paid Grizel, in 1725, five hundred merks, which she had accepted of in full of legitim, portion natural, or otherwise, yet that a discharge, dated in 1773, being thus granted *inter conjunctas personas*, could not have the effect of barring prescription forty-eight years after the date of the discharge and contract to which it refers.

Answered: That as the prescription as to Grizel's share was not run in 1763, when the pursuer commenced his action, so as Grizel afterwards, in 1773, made over her right to the pursuer, the claim made by him in her right must draw back to 1763, when he, in fact, stood virtually in the right of his sister Grizel, in consequence of his having paid her 500 merks by her marriage contract in 1725; and as the assignation and discharge in 1773 was only completing and fulfilling what she was bound to do by her marriage-contract in 1725, so the assignation must draw back, and must be considered as if it had been executed at that time. That the

NO. 2.

interruption of the negative prescription has always been considered as a most favourable plea in our law; thus it has repeatedly been found to be interrupted by a citation, even although informal; DIV. 15. PRESCRIPTION, Thus, also interruptions used by an apparent heir, although not the real creditor, have been found effectual against prescription, provided he were served heir within forty days after their date; 24th July 1672, Edington, No. 459, p. 11292. "But those interruptions also, which are made by one "who had only a putative or supposed title, (are effectual against prescrip-"tion), so that the true creditor afterwards pursuing, though he derived "no right from the supposed one, was found entitled to the benefit of the "interruption used by him;" Ersk. B. 3. Tit. 7. § 41. That according to the equity of this doctrine, although the respondent had not right to his sister's third, when he brought the action upon the putative title for the whole 1000 merks, yet it must have interrupted the prescription as to Grizel's share, and must therefore now render his claim effectual, having now acquired that right.

The Court (21st February 1776), adhered to the Ordinary's interlocutor, finding the pursuer entitled to two-thirds of the 1000 merks. But upon advising another reclaiming petition and answers, they altered that interlocutor, (July 1776,) and sustained the objection of prescription.

Lord Ordinary, *Alva*. For John Robertson, *Nairn*, *M'Cormick*. For Janet, *Elphinston*.

D. C.

1776. *December* 17. MACGHIE *against* TINKLER.

NO. 3.

The triennial prescription of accounts applied, altho' the pursuer alleged that he was *non valens agere*, because the sum being small, and the defender in England, the matter could not afford the expence of an action in a foreign country.

See No. 317. p. 11112.

TINKLER, who was a Quartermaster in the first regiment of dragoons, was charged by Macghie before the Bailies of Hamilton, for payment of L. 10 Scots, as the value of a boll of beans, and of one shilling and sixpence Sterling for drying and breaking another boll. These furnishings, and this work, had been performed, according to the charger, in the year 1764, at the desire of Mr Tinkler. In a declaration, however, emitted before the Bailies of Hamilton, Tinkler denied any recollection of either the furnishing or the work. A proof upon this was allowed to Macghie, in consequence of which, the Bailies pronounced decree in terms of the libel, and for the expence of extract. Of this judgment Tinkler brought a suspension before the Court of Session, which Lord Alva, Ordinary, (7th December 1774,) refused. A representation was given in for the suspender against this interlocutor, in which he had recourse to the plea of prescription. The Lord Ordinary, upon advising this representation, with an-