

of the lands of L.1000 Scots yearly after his death. An apprising was led by her and her second husband, James Balfour, against her son, as charged to enter heir to his father, the said Robert, for payment of L.4500 of bygones; and in 1664 and 1694 obtained charter of apprising, on which sasine followed in 1699. In 1697 they disposed to their son Henry Balfour, on which he was infeft; and they and their heirs have possessed ever since. Johnston got a bond (I suppose in trust) from Balfrages, as apparent-heirs of Robert Stuart, and adjudged, and thereon pursued reduction; and Balfour produced the above charters and sasines, and offered to exclude, and to prove 40 years uninterrupted possession. I allowed a proof, and assigned the same day for the first term; and he proved 60 years possession; but the pursuer produced the contract of marriage 1650, (but whereon no infeftment had followed) and a tack set by Marion Bruce and her husband in 1670, of a part of these lands, wherein she is designed liferentrix of the lands underwritten, but which was only signed by the tenant, but not by her or her husband; and insisted that no prescription could run during the life of Marion Bruce, the liferentrix, who died only in 1708, not only because the heritor was *non valens*, but also because the liferentrix, having entered to possess as liferentrix, *non potuit mutare causam possessionis*, therefore the possession cannot be ascribed to the infeftment of property; and therefore the defender cannot subsume in terms of the act 1617; and quoted the cases, ult. February 1666, Earl of Lauderdale, (Dict. No. 379. p. 11,205.) 17th January 1672, Young, (Dict. No. 381. p. 11,207.) and February 1680, Brown against Hepburn, (Dict. No. 382. p. 11,208.) and the liferent was no title of possession of the lands, but only of the house, yards, and coals. 2dly, The brocard *non potuit mutare causam possessionis* does not hold in the case of the long prescription, 27th November 1677, Grant against Grant, (Dict. No. 135. p. 10,876.) 20th February 1675, Earl of Murray against Wemyss, (Dict. No. 15. p. 9036.) Stair, PRESCRIPTION, § 19. This case I reported,—and we unanimously found the prescription instructed, and that the defender excludes the pursuer, and sustained the defence. Arniston and the rest laid their opinion on the liferent being an annuity and not a locality; for Arniston said, that had it been a locality, he thought the possession must have been ascribed to it as the preferable title.

No. 27. 1746, June 13. EARL OF CAITHNESS, *against* SINCLAIR OF ULBSTER.

THE Lords first adhered to the interlocutor, that the Earl's minority must be deducted from the date of the first disposition 1691, and not from the date of the second disposition 1702, and next adhered to the other interlocutor, finding that the minority stops prescription of the apprising only *qua* such, reserving to parties to be heard upon the effects of that interlocutor; and refused the additional petition on *bona fides*, or rather *mala fides*, of Ulbster and his authors.

No. 28. 1746, July 30. WALTER RUDDIMAN *against* TRADES MAIDEN HOSPITAL.

A BOND dated 1689 being assigned in 1695 to a blank person, the bond was registrate in 1703, but the assignation not registered nor heard of till after 1733, when the pre-

scription of the bond was run, and the granter dead, and when it appears, filled up in a different hand, in the name of the granter's grandchild, Thomas Smith; whose heirs brought a reduction on it of a disposition by the debtor to the Maiden Hospital on the act 1621. The defence was prescription of the bond. Replied, Minority of Thomas Smith; and his minority was proved. Duplied, The assignee's name blank, and filling or delivery is not presumed. And notwithstanding all the suspicious circumstances, the Lords found that the filling up and delivery, of the date, was presumed, and found his minority must be deducted, though the assignation had not been intimate,—*renit. inter alios* Tinwald *et me* on the first point, 24th June.—30th July Adhered, seven to four.

No. 29. 1747, July 21. JOHN CAMPBELL *against* COLONEL HALKETT.

IN 1688 Earl Breadalbane got the Council's recommendation to the Treasury for L.300 sterling, which in 1693 he gave to Sir Peter Murray, Receiver-General, on his receipt and obligation to pay it if it should be allowed to him. In 1696 Sir Peter had his accounts allowed, in which was this L.300, and produced the recommendation with Breadalbane's receipt of the money subjoined to it. In 1736 the pursuer, as having right to this obligation, sued the defender, as representing the granter, the 40 years not being run from 1696. The defence was, the 20 years prescription of the obligation. Answered, The suit was not on that obligation, but on Sir Patrick's account with the Treasury, and he used the obligation only as evidence that he had not paid the money to the Earl. Answered, Without the obligation there is no foundation for an action, and action might as well be sued on a holograph bond on the narrative of having borrowed the money, after the 20 years. Minto, Ordinary, sustained the prescription, and this day we adhered, but were much divided, five against four, and the President. Against the interlocutor were the President, and Tinwald did not vote, Minto in the Outer-House, Arniston absent, as he has been all this Session,—14th January 1747. 19th February last, we altered the interlocutor of 14th January, and found the holograph obligation probative of the facts therein contained. But Colonel Halkett having in his turn reclaimed, we, 9th June, took the whole circumstances of the case under consideration, and thereon found that now no action lies upon the obligation. 21st July Adhered.

No. 31. 1749, Jan. 25. HARROWAR *against* WELLS.

A WRITTEN tack of 19 years being set in 1728, a bargain that the hay was set in steel-bow, not contained in the tack, was found proveable by witnesses, notwithstanding the 9th act 1669; and Kilkerran's interlocutor altered, and a proof before answer allowed, *renit.* President. I was in the Outer-House.

No. 32. 1749, June 28. WEMYSS *against* ALEXANDER CLERK.

IN 1721 Mr Wemyss put some bills for small sums with diligence on them in Alexander Clerk's hands, who was then a messenger, with discharges to the debtors, as was supposed, to execute the diligences, and in case of payment to give up the discharges; and he gave a receipt for the writings without saying for what use they were put in his hands, or