

The Court held, *Smith and Bogle against Gray*, 30th June 1752, to be the regulating decision, whenever one has two unlimited titles in his person, in which case he is supposed to possess on both. The idea, that there was only one title of possession on which prescription could be pleaded, the other being a right of apparenry merely, under the charter 1702, and, therefore, inferior (it was argued) to the right by infeftment, was not listened to by the Court; because, though an apparent heir cannot exercise the higher rights of property, such as selling or encumbering with debt, yet apparenry is a good title of possession, which is sufficient for the present purpose.

No 394.

The Court found, (24th November 1802,) "That Mrs Sarah Durham has the sole right to be served heir of provision to her brother, the deceased Thomas Durham."

To which judgment they adhered, by refusing a reclaiming petition, without answers.

For Sarah, *Lord Advocate Hope, J. Wolfe Murray.*

Agent, *Ja. Fergusson, W. S.*

For Janet, *Solicitor-General Blair, J. Clerk, Cathcart.*

Agent, *Ja. Gibson, W. S.*

Clerk, *Colquhoun.*

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Fac. Col. No 62. p. 141.

DIVISION XIV.

Time of Prescription how Computed.

1610. November 30.

A. against B.

No 395.

A BOND bearing no date of day, month, nor year *in facto antiquo* will be interpreted expired and prescribed as past 40 years, and so will give no action, unless the producer condescend upon a date within 40 years at the intending of the action.

Fol. Dic. v. 2. p. 126. Haddington, MS. No 2027.

1630. December 23.

OGILVIE against The Lord OGILVIE.

No 396.

PRESCRIPTION being alleged against a bond dated the day of 1590, whereupon summons was not raised till June 1630, it was found that it did not prescribe, in respect that it was pursued within the 1630, for, because

No 396. the month was blank wherein it was subscribed, it was interpreted against the debtor, as if it had been made the last day of the year 1590.

Spottiswood, (DE PRÆSCRIPTIONE & USUCAPIONE.) p. 237.

1634. *March 18.*

SLOWAN *against* SIMPSON.

No 397.

PRESCRIPTION of 40 years being *objected* against a bond, and it being *answered*, Not so long from the term of payment; it was found, That the running of a bond is from the date thereof, and not from the term of payment.

Spottiswood, (DE PRÆSCRIPTIONE & USUCAPIONE.) p. 235.

1671. *June 30.*

BEADMEN of Magdalene Chapel *against* DRYSDALE.

No 398.

In the long prescription of forty years, the *tempus continuum* is counted, not the *tempus utile*.

Fol. Dic. v. 2. p. 126. Stair.

* * * This case is No 347. p. 11148.

1687. *February.*

CLAVERHOUSE *against* LIN of Largo.

No 399.

FOUND that when a decret is pronounced, though it be stopped, and then lie over for seven years, there needed no wakening by a new citation, as appointed by the late act of prescription; because *lis est sopita* by the decret.

Harcarse, (PRESCRIPTION.) No 775. p. 220.

1746. *June 5.*

MEMORIAL for the CLERK of the REGISTER of HORNINGs to THE LORDS OF SESSION.

No 400.

A HORNING denounced within the year after the charge, and offered to the Register within fifteen days after the denunciation, has been by the constant practice registered.

There is now one presented, the charge is given the 11th, 17th, and 25th days of October, 5th, 7th, 26th, 27th, 28th, and 30th days of November 1744. It is denounced the 3d day of June 1746.

An act of Parliament passed in the present Session, enacts, "That the time and space betwixt the 16th of September 1745 and the 1st of June 1746, should not be reckoned in any short prescription."