

No 423.

Replied ; These processes mention no annuity ; and they might have been raised for some other cause, even for the tenants' proper debt. Again, they are in a factor's name, and no factory produced.

THE LORDS repelled these interruptions, unless they were adminiculate to have had relation to the annuity.

Harcarse, (PRESCRIPTION.) No 770. p. 219.

No 424.

1686. *February*.Mr THOMAS SKENE *against* Sir JOHN CAMPBELL.

A DEBTOR's promise to pay annualrent of his bond found to be interruption, though payment was not made within 40 years.

Fol. Dic. v. 2. p. 128. Harcarse, (PRESCRIPTION.) No 774. p. 220.

1687. *June*.PITTEDIE *against* RAMORNIE.

No 425.

LANDS dispoñed by a minor being appriſed from the buyer, and the appriſer infeft, and in poſſeſſion, the minor *intra quadriennium utile* revoked, and raiſed reduction, wherein he called the buyer only ; yet this ſummons of reduction was ſuſtained as interruption *contra* the appriſer.

Harcarse, (PRESCRIPTION.) No 777. p. 220.

1688. *June 13*.FEUARS OF GAITMILK-MILL *against* FEUARS OF DUNFERMLINE ; *viz.* COUNTESS of ROTHES, LADY KINGLASSIE, &c.

No 426.

In a declarator of the immunity of bear ſold, and not ground from a thirlage of *grana crescentia omnium terrarum* ;

Alleged for the defender ; That the purſuer muſt prove *positive*, that, for the ſpace of 40 years, &c. regularly and openly, the bear was ſold without any multure exacted, and not barely *negative*, that the multure of any bear ſold was not exacted, ſeeing the thirlage was conſtituted *ſcripto* ; although ſuch a negative probation were ſufficient to hinder or take off a conſtitution of thirlage by preſcription ; *2do*, The poſſeſſion of any ſpecies of grain conſtitute *ſcripto* ought to preſerve and interrupt.

THE LORDS ſuſtained the firſt allegiance for the defender, and probation as to the immunity being only negative, they aſſoizied from the declarator, and

found that the immunity was not proved; and so the second point was not considered. *Item*, The LORDS found, that the master's rents, *viz.* the Abbot's feu-duties, in victual and horse-corn, paid to the Abbot, (not being converted,) was free of multure. Though it was controverted by several, and not determined, if horse-corns, spent upon labouring horses, should be free.

No 426.

Thereafter, upon the 14th July 1688, the LORDS found, that the ancient barony being now divided into many hands, the decreets of abstraction for both, (in respect of the constitution by writ,) against several of the heritors for diverse years, did interrupt even against the other heritors not contained in the decreets *quoad* barley. And the LORDS inclined to find, that the taking new charters from the Abbot's successor, Lord Tweeddale, within the 40 years, containing the general astriction of corns of all sorts, was an interruption of the freedom, though there was no act or document of the pursuer heritor of the mill, but of the superior.—And 20th July 1688, the LORDS adhered to the promiscuous interruption by decreets.—*Item*, Found that teinds not being *decimæ inclusæ*, or converted, or valued to money, therefore ought to be free of multure.

This practise is not so very clear.—The pursuer was Thomson of Mildeane.

Fol. Dic. v. 2. p. 129. Harcarse, (MULTURES.) No 730. p. 206.

1696. June 6.

Mr JOHN GUTHRIE *against* NISBET of Dirleton.

MR JOHN GUTHRIE pursues Nisbet of Dirleton for 1000 merks, contained in a bond granted by the deceased Sir John Nisbet and Craigtinny, both whom he represents. *Alleged, imo*, The bond being dated in the year 1650, was prescribed. *Answered*, Annualrents had been paid within the 40 years, which was a sufficient interruption of the prescription. *Replied*, Any annualrents paid were only by Sir Patrick Nisbet, as factor for Craigtinny's tutors, when he was minor, which cannot prejudice him, unless it be instructed that he either had a special warrant to pay it, or else that it was allowed in his chamberlain accounts; otherwise, factors might constitute debts on their constituents without their knowledge; and though *apocha trium annorum* be a presumptive discharge of all precedings, yet three consecutive discharges given by a chamberlain ought not to have that privilege. Yet see Stair Instit. Lib. 1. Tit. 18. in the case of the Laird of Wedderburn *against* Nisbet, No 7. p. 7181. and that the factor's discharges operate against the constituent for years within his commission.—THE LORDS, considering this was no constitution of a debt, but the preserving it against an odious prescription, thought the factor's paying the annualrent, [interrupted] (especially being a tract of several years payment,) seeing the act of Parliament James III. requires only the taking a document to stop pre-

No 427:
Held to be sufficient interruption of prescription, that the factor for the tutors of one of the obligants in a bond had paid annualrent.