assignation taken blank, (which extinguished the debt,) and her name afterwards filled up in it; and she acknowledging that she got both the assignation and bond from her father, the question occurred to the Lords, Whether the debt was so extinct by confusion, as that he could not make it reconvalesce, by filling up his daughter's name in the assignation; which was as great an indication of his mind to continue debtor, as if he had given her a bond of provision: only, it was objected, this was not the habile way.

The Lords ordained her to be reëxamined, if she saw the assignation blank, and if it was so at the first; or if her name was originally filled up in it: Though this imports little to take off the principle, *quod confusione tollitur obligatio.*

Vol. I. Page 645.

1694. *November* 27. ALEXANDER BRAND, late Bailie in Edinburgh, *against* HUGH WALLACE of INGLESTON.

THE Lords considered the two points whereon he was sought to be made liable; and thought the first *medium*, founded on his declaration of the receipt of the papers, narrow, unless they could subsume that he had effects at that time in his hands, of Edward Ruthven's, or that he had taken course with other debts of his, posterior, at least no more privileged than Bailie Brand's; for his obligement and trust at least imported this much, that he should have presented the account and precept to the heirs of Edward Ruthven, and craved to have it allowed; and that they should have refused it upon some ground of law.

But the Lords laid hold on the second; and, before answer, allowed Bailie Brand to prove, *scripto vel juramento*, that Hugh Wallace had made a transaction for what he intromitted with of Edward Ruthven's means; for, if he had taken a discharge of the whole count and reckoning, without discussing this article of Bailie Brand's debt, they thought it reasonable he should be liable for it.

Vol. I. Page 645.

1694. *November* 29. MR RORY M'KENZIE, Minister at Avach, *against* GEORGE M'KENZIE of ROSEHAUGH.

MR Rory M'Kenzie, minister at Avach, against George M'Kenzie of Rosehaugh, for paying the expense of building a manse, which the defender, as principal heritor, was liable in. The defence was, This being a claim of reparations, it was prescribed, not being pursued within five years; conform to the act 1669, whereby all bargains anent moveables prescribe in that time.

ANSWERED,—This case does not fall under the quinquennial prescription introduced by that act. *2do.* Though it did, the visitation made by the presbytery, by the bishop's order, being a document in writ, interrupted the prescription.

The Lords repelled the defence, and found it probable *prout de jure;* and allowed him to prove he built it, and what he expended thereon.

Vol I. Page 646.