

of Eccles to insert any son therein he pleased, that power of election fell with him, and is not competent to his assignee.

ANSWERED for the pursuers,—Prescription is sufficiently interrupted by the assignee's possession. 2. The second objection would have some weight, if the blank in the gift were an absolute blank, without any designation to demonstrate the person; but the person being demonstrated by the character of son to such a man, it is most probable, that seeing Eccles had several sons at his obtaining the gift, the king intended, by leaving the son's name blank, to have the grant pass to the longest liver of the sons. 3. Albeit the right of primogeniture prevaileth in succession, it hath no prerogative in grants of this nature. 4. The assignee, as *procurator in rem suam*, hath the same power to fill up the blank with the name of any of Eccles's surviving sons, as the cedent might have done.

The Lords found, That any possession by Maitland of Eccles, or his assignee, within forty years, interrupts prescription. And found, That the gift in favours of Maitland of Eccles, and his son, became not extinct by the father's death, without filling up the blank; but subsisteth in the person of the son now alive. Page 599.

1712. July 9. BARBARA FEA, Spouse to PATRICK TRAILL of Ellness, *against* Her Husband.

IN the process, at the instance of Barbara Fea, against Patrick Traill, her husband,—The Lords found the defender obliged to aliment the pursuer, according to his fortune: Albeit it was alleged for the defender, that it was the duty of a wife to follow and live with her husband; and if the pursuer would come to Ireland, where the defender resides at present, he would entertain her according to his quality and fortune: In respect it was answered for her, that if the defender would tell her in what particular place of Ireland he is, and advance money to defray the expense of her journey, she was content to repair to him; but since he declines to let her know where he may be found, and to furnish her money to enable her to come to him, his offer to aliment her in Ireland is but a mere sham and amusement: especially considering that she had formerly gone in quest of him to London, who, finding her there, maltreated her; and then, deserting the place for her sake, retired she knows not whither. But he having a land estate in Orkney, she ought to have an aliment out of that in the mean time.

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1712. July 9. ELIZABETH GRANT, Spouse to JAMES KENNEDY, Periwig-maker in Edinburgh, *against* PATRICK GRANT of Dunlugas.

ROBERT GRANT of Dunlugas, having, in anno 1687, disposed his estate to Patrick Grant, his eldest son in his contract of marriage, with the burden of 6000