qniring interruptions to be renewed, relate only to the case of citations; but where processes are further prosecuted to compearance and judicial acts, it is not necessary to renew the diligence. 3*tio*, Minority since that process. No 181.

"THE LORDS found the process did sufficiently interrupt, without necessity to be renewed."

Fol. Dic. v. 2. p. 113. Dalrymple, No 58. p. 73.

1714. *July* 8. DUKE of GORDON *against* LAUCHLAN M'INTOSH of that Ilk.

No 182.
The title of prescription must be in its nature exclusive.

THE Earl of Huntly having anciently disponed to the Laird of M'Intosh's predecessors the lands of Dunachtoun and others, to be held of the disponer by ward and relief, in the year 1635 William M'Intosh, while the Earl was abroad, took precepts furth of the Chancery, and by running the same, of course obtained himself to be infeft holding of the Crown *supplendo vicem*. During the civil wars of Scotland the estate of Huntly came in the person of the Marquis of Argyle, who being forfeited in May 1661, the superiority of the said lands of Dunachtoun and others fell to the Crown; and in October thereafter Lauchlan M'Intosh was retoured and infeft as heir to the said William in the said lands holden of the Crown. In April 1662 the King conferred the Marquis of Argyle's forfeiture upon the Duke of Gordon, in so far as concerned his own paternal estate of Huntly, whereupon his Grace was infeft, as also he was infeft in the said lands upon a new grant in the 1685, with a *novodamus*, upon his own resignation. The Duke, and the Marquis of Huntly his eldest son, commenced a reduction and improbation against Lauchlan M'Intosh of that Ilk, of his rights to the saids lands of Dunachtoun and others. After the terms were run, M'Intosh produced the said retour in the year 1661, whereby his father was served, holding of the Crown, with infeftment thereon, by virtue whereof he had continued in the peaceable possession till his death in the year 1704, and the defender since that time: Whereupon the defender *alleged*, He had prescribed a right to hold of the Crown, and had produced sufficiently to exclude the pursuer.

Answered for the pursuers; The said title and possession could not found prescription; because, 1*mo*, At the time of the retour 1661, the defender's lands held of the Crown, by virtue of the Marquis of Argyle's forfeiture, and the King, who then entered the vassal, afterwards gifted the superiority to the pursuer; whereby possession upon that retour and sasine is so far from founding a prescription against the pursuer, that it must be reckoned his possession, and in a competition with any third party would make up prescription in his favour: As if a superior should, after entering his vassal, dispone his superiority to another, no doubt, though that vassal should possess 60 years by virtue of that sasine held of the other superior, his possession would accrue to him who acquired the right of superiority, and be reckoned as if the infeftment had been from

No 182. himself, seeing it flowed from his author before he was denuded; 2*do*, The lands being retoured held of the Crown the time of the forfeiture, when really they were so, that retour was unquarrellable by the Duke even after the gift, and he, during M'Intosh's life, was non valens agere, contra quem non currit præscriptio. Nor can there be any place for prescription but where the possession is by virtue of a title *a non domino*, whereas M'Intosh's title flowed *a vero domino*, the time he got it; 3*tio*, The defender doth not connect a title in his person, for he produceth only his father's retour and sasine, whose possession was interrupted by the Duke's minority, till the year 1672, from which time till the year 1704, when he died, there are only 32 years; and the defender was never infeft himself: Whereas the act of Parliament introducing prescription requires instruments of sasine one or more continued and standing together for the space of 40 years. So that unless the defender had been infeft as heir, and possessed by virtue of his own sasine to complete the 40 years, the defence of prescription is not relevant, as was decided 15th February 1671, E. Argyle *contra* L. M'Naughton, No 85. p. 10791.

Replied for the defender, 1*mo*, Had the defender's father's retour proceeded upon the forfeiture of the Marquis of Argyle, the inquest behoved to have served, answering the head in the brieve concerning the holding that the lands held formerly of the Marquis of Argyle, and nunc ratione foris facturæ tenentur de S. D. N. R. which this retour does not, but simply retours the lands holden of the Sovereign, as any other lands which formerly held of the Crown. Therefore the family of Huntly getting the gift *in anno* 1662, were entitled to quarrel the retour as effectually as Argyle might have done, had he not been forfeited. Besides, seeing the pursuer's own the retour in the 1661 to have been right, in regard of Argyle's forfeiture, the King could not gift the superiority, and interpose a new superior betwixt the vassals and the Crown, there being *jus quæsitum* to the vassal, just so as if the Marquis had resigned in the King's hand *ad remanentiam*, in which case the King could not have disposed of the superiority to the prejudice of the vassals;—and since the bishops came to hold of the Crown, by the abolishing of Prelacy, the King cannot interpose a new superior over them; 2*do*, The act 1617 does indeed require sasines one or more continued and standing together, where there is no warrant of the sasine produced: But where the warrant of the sasine is produced, whether charters, retour, or precept of *clare constat*, without any such connections of sasines, the heir can continue his predecessor's possession; and if it were otherwise, a sasine without a warrant would be as good as a sasine with a warrant. So that the defender having produced the retour 1661, than which there could be no better warrant of his predecessor's sasine, that states him in the case of the first clause of the act 1617, which makes a charter and sasine with 40 years possession good; and he needs not found upon the second clause about sasines in favour of heirs wanting warrants.

Duplied for the pursuers, 1*mo*, It was never pretended that a decreet, which a retour is, could be reduced, if just in itself, because it doth not express the *ratio decidendi*. So that it is of no moment, that the reason why these lands held of the Crown in the year 1661 was not expreesed; and the immediate superiority of these lands falling to the Crown, by Argyle's forfeiture, the King, as coming in place of Argyle, might have disposed of the superiority to any person, as Argyle himself could have done, 26th Nov. 1672, E. Argyle *contra* L. M'Leod, *voce* SUPERIOR and VASSAL; for the meaning of that principle, that a superior cannot interject betwixt him and his immediate vassal, is, that a superior cannot multiply superiors over his vassals, and in place of one, give him two or three, whereby the vassal would be vassal to the mediate as well as to the immediate superior: But a mediate superior acquiring right to the immediate superiority, may dispone either of them and retain the other, in which case he does not multiply the superior in prejudice of his vassal. And even though the Earl of Argyle had resigned in the Sovereign's hands *ad remanentiam*, his Majesty succeeding in the Earl's right, might no doubt have gifted the superiority next day. For it is a mistake to allege any *jus quæsitum* here to the subject, since the Crown coming in place of the immediate superior *tantum utitur jure privato*. The reason why the bishop's superiority cannot be gifted by the Crown is because an express act of Parliament provides so, 29th act, Sess. 2d, Par. W. and M.; 2*do*, It was never heard, that the production of the warrant of the predecessor's sasine would supply the want of a sasine in the person of his heir; and no argument can be drawn from purchasers to heirs; the case of the former acquiring *bona fide* for an adequate price, who could not know the defect of his predecessor's titles, being more favourable than that of the latter, who could not fail to know the nature of his predecessor's rights in his own hand. No 182.

THE LORDS repelled the defence of prescription, in respect the defender's lands did at the time of the retour hold of the Crown, by virtue of the Marquis of Argyle's forfeiture; and repelled the allegeance of interjecting a superior, in respect the right of the superiority did only devolve upon the Crown by virtue of the said forfeiture.

Fol. Dic. v. 2. *p.* 112. *Forbes, MS. p.* 77.

1727. *January.* ELLIOT of Arkleton, &c. *against* MAXWELL, Fiar of Nithsdale.

No 183.
A registered reversion found good against a party asserting an irredeemable right to the lands by the positive prescription, a having been

ADAM CUNNINGHAM of Woodhall, in the year 1633, was infeft by charter under the Great Seal, in the lands of Meikledale and Meikledale-hope, heritably and irredeemably. He conveyed these lands in the 1643 to Walter Scot of Broadhaugh, who was likewise publicly infeft; and, in the 1669, Scot conveyed to Elliot of Arkleton, who obtained also a charter from the Crown, with a *novodamus*; and upon these titles, the lands having been possessed by Arkleton as proprietor, ever since, till of late, that, upon the faith of his right, several cre-