

No 387. 1728. November 26. FRASER *against* M'KENZIE.

AN apparent heir, in possession of an estate by singular titles, having thereafter purchased in an apprising, it was found, That the apparent heir's possession did preserve the said apprising from the negative prescription: It being *pleaded*, in the general, That where a possessor has many rights in his person, all of them distinct titles of possession, prescription cannot run against one of them, so long as he keeps possession; for what can he demand upon any of these titles, but to have the possession; which if he already has, there can be no occasion for an action. But afterwards, upon a reclaiming bill, the Lords found no necessity of determining this point, having taken it up upon a separate footing. (See APPENDIX.)

*Fol. Dic. v. 2. p. 125.*

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S E C T. V.

What Effect, if the Pursuer lay open to a Ground of Compensation?

1665. June 17. GIDEON MURRAY *against* BEATRIX THOMSON.

No 388.

An account was found to be prescribed *quoad modum probandi*, although the debtor had claims of compensation.

GIDEON MURRAY having obtained decret against for certain merchant ware, wherein he was holden as confest, and thereafter reponed, and the decret turned in a libel, the receipt of the goods was found probable, *prout de jure*, and was accordingly proved; and the cause being concluded, and the depositions advised, it was *alleged* for the defender, *1st*, That he produced, and instantly verified, that the pursuer had granted him a bond, after the furnishing of the account, of a greater sum, which must be presumed to have included satisfaction of the account. *2dly*, The decret was more than three years after the furnishing, and so was not probable by witnesses; but that manner of probation was prescribed by the act of Parliament. The pursuer *answered* to the first, That both those exceptions were competent, and omitted; and now, after probation taken, there was no reason to sustain that allegiance; for after litiscontestation, no new exceptions can be admitted, unless they be instantly verified and emergent, or at least new come to knowledge, as this is not; for it was obvious, being founded upon so known a law, as to the prescription: And as to the other, It is but a weak presumption, noway relevant,