

No 45.

1730. July.

LOCKHART *against* DUKE GORDON.

IN a pursuit upon a bond of pension granted to an advocate, where the bond had lien over above 40 years without any thing done upon it, yet the bygone pensions falling due within the years of prescription, were decerned to be paid to the creditor's representative; upon this footing, that every year's pension was a separate obligation, and run a different course of prescription. See APPENDIX.

*Fol. Dic. v. 2. p. 100.*

No 46.

1733. July 17.

ANNA HOME *against* KER of MORISTON and HOME of Coldinghamlaw.

IN a pursuit upon a bond saved from the negative prescription by interruptions, this defence was laid, That the bond was fraudulently elicited by an interdictor from the person interdicted, without any onerous cause. It was *answered*, That any challenge of fraud, formerly competent, is now cut off by prescription. *Replied*, The *exceptio doli* never prescribes. *Temporanea ad agendum sunt perpetua ad excipiendum*. The prescription was found to take place. See APPENDIX.

*Fol. Dic. v. 2. p. 99.*

No 47.

1738. July 25.

AINSLIE *against* WATSON.

IN a reduction of an adjudication, upon which possession had been obtained and continued above 40 years, though not without interruption, upon this ground, That though it was a total adjudication, a fifth part more was adjudged for, which is only competent in special adjudications;—the negative prescription being *objected*, it was *answered*, There is a difference betwixt intrinsic nullities and objections that are extrinsic, resolving into grounds of reduction. These, suppose the diligence to be valid in itself and effectual till it be taken out of the way by a sentence reducing and annulling the same; in which case the objection must be made within 40 years, otherwise the right of challenge is cut off by prescription. Those go upon the supposition, that the diligence is null and void, and a reduction upon that ground does not annul, but declares that it was null and void from the beginning; and a matter of fact may be declared at any distance of time. THE LORDS repelled the negative prescription. See APPENDIX.

*Fol. Dic. v. 2. p. 99.*