

rallell case, 25th January 1678, Duke of Lauderdale *contra* the Earl of Tweeddale, *infra, h. t.* Replied, That whatever might be done in the short prescriptions, as the triennial, or the like, yet, in the grand 40 years prescription, no time is discounted, save what is done by an express law; else if one would precisely make it only to consist of *tempus utile*, wherein judicatories are sitting, and there is *copia ad eundi prætorum*, then Sundays and Mondays behoved also to be discounted, and all the anniversary vacation-days. THE LORDS decided only on the first objections against the legality of the execution, and found it so null, as they would not so much as allow it to serve for an interruption; and so preferred and assoilzied Bearford from this reduction and pointing of the ground pursued against him, for the ground-annual of 48 merks out of the tenement called the Black Turnpike belonging to him.

*Fol. Dic. v. 2. p. 103. Fountainhall, v. 1. p. 688. 774. & 777.*

No 82.

1740. December 5. AGNES GED and her HUSBAND *against* BAKER.

FOUND, that 40 years possession upon an infeftment proceeding upon a charter of adjudication, excluded all objections of nullities against the adjudication or grounds thereof, although there had not been 40 years possession since the expiry of the legal; but found that the years of minority were to be deducted.

*N. B.* There is no doubt but it is competent to allege payment within the legal, any time within 40 years after the expiry of the legal.

*Fol. Dic. v. 4. p. 95. Kilkerran, (PRESCRIPTION.) No 6. p. 418.*

No 83.

1745. June 7. JOHN JOHNSTON *against* JAMES BALFOUR.

JOHN JOHNSTON, as adjudger from the apparent heirs of Patrick Stewart of Beath, brought a reduction of the rights of James Balfour present possessor thereof, who, to exclude the pursuer's title, produced a charter, 24th February 1694, of the lands in favour of James Balfour and Marion Bruce, his grandfather and grandmother, and sasine thereon, 19th January 1699, bearing to proceed on an apprising led by them, 29th July 1664; and on these titles alleged possession for more than 40 years.

A proof of the possession being led, it was fully made out, and appeared to have commenced before the date of the charter.

*Pleaded* for the adjudger, That Patrick Stewart dying in the year 1654, Marion Bruce his widow had married to James Balfour, and they had taken possession of the estate under colour of her provisions, which were a liferent of the house and gardens, and of the coal, and an annuity of L. 1000 out of the lands; and she had a direct title to possess the house and coal; and with re-

No 84.

Forty years possession since the date of a charter and sasine, bearing to have proceeded on an apprising, which was not produced, was sustained to exclude a reducer, tho' it was alleged the possession was older than the date of the charter, and had begun upon the obtainers thereof being entitled