

1745. *June 7.* JOHNSTON *against* BALFOUR of Beath.

No. 26.

A LIFERENTRIX provided to the liferent of a house, yard, and coal, and to an annuity out of the lands, entered to the possession of the whole, and afterwards apprized for a considerable sum of bygones; upon which her second husband and she obtained charter and sasine, and they and their heirs continued to possess thereafter near to 50 years. The question was, If they had the benefit of the positive prescription? The Court thought, that if the liferent had been a locality, the possession must have been ascribed to that title, and then the prescription would not have been run. But as it was only of an annuity out of the lands, though it was a locality of the house, yard, and coal, they unanimously sustained the defence of prescription, and found that the defender produced sufficient to exclude the heirs of the *fiar*, or which is the same, an adjudger in trust for them. (See DICT. No. 84. p. 10789.)

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1746. *June 13.*

EARL of CAITHNESS and MR FRANCIS SINCLAIR *against* SINCLAIR of Ulbster.

No. 27.

IN the process Earl of Caithness and his Trustee, against Mr Sinclair of Ulbster and Earl of Breadalbane, the defender pleading prescription on a disposition and infestment in 1673, the pursuer replied on his own minority;—but as he was not heir of the family till his father's death in 1702, when he was of full age or thereabouts, he founded his reply on the apprizing of the estate by one Murray, which had been acquired by his grandmother, and of which he produced two dispositions from her to him, the first dated 1691, when he was a minor infant, and wherein the disponee's name appeared filled up with a different hand from the writer of the body, and another in 1702, referring to and ratifying the former, the first having the common clause of delivery of writs, and the second referring to them as already delivered. It seemed hard that a latent disposition to an infant should stop running of the prescription; but we thought the law stood so, and there was no division. But the first question was, What time the first disposition is presumed to have been filled and delivered? The Court was divided in that point, but it carried, from the date of it. The second question was, Whether that would stop running of the prescription only in so far as concerned that apprizing, so that if it was null, or satisfied, or paid, or could be otherwise excluded, the prescription might run as to all other rights? or if