

minors, or if the exception of minority in that act be only meant from the negative prescription of actions. There were different singular successors in different lands, whose rights depended on that disposition 1692, some of whom had possessed more than 40 years by charters and sasines, others again, though they had possessed as long, yet had not so early completed their titles as to plead the positive prescription. The creditor's debt had also been divided between two successors, either executors or assignees, one of whom was so long under age, that deducting his minority, the 40 years were not run, but the other could not plead minority. Both defenders pleaded the negative prescription, and Lord Justice-Clerk sustained the defence against the person who could not plead minority; but as to the other, he sustained the reply of minority. One of the defenders, William Elliot of Kirklands, pleaded also the positive prescription, and the pursuer replying minority, he sustained the defence and repelled the reply. The pursuer reclaimed, and on answers, the Bench being divided, the cause was heard fully in presence, (*vide* my Notes on the petition, and the Lord Advocate noticed most of the arguments there.) But the Court observing that the purport of the process was to oblige a third or fourth purchaser, at the distance of 57 years, to prove or astruct the onerous cause of the disposition to their remote ancestor in 1692, they directed the Counsel to argue that point; and on the hearing, unanimously found the defender not bound to astruct the onerous cause of that disposition. (See NOTES.) (See DICT. No. 465. p. 11315.)

No. 33.

1751. *July 27.*

MR FULLERTON'S CASE.

A WRITER, who in 1727 borrowed up from the clerks his client's papers on receipts, being sued for them only in 1749, no further bound, than to depone as in an exhibition.

No. 34.

1753. *August 10.* M'INTOSH of Aberander *against* JOHN BAILLIE.

PRESCRIPTION of land-rents runs, notwithstanding the master was debtor to the tenant during the five years in another debt, wherein these debts might

No. 35.

No. 35. have been compensated, and that debt so far extinguished; yet the prescription runs of the rents, and the master cannot plead compensation unless he prove resting owing by oath. *Vide* 5th July 1681, Dickson against Macauley, (DICT. No. 288. p. 11090.)

See Ainslie against Watson, 25th July 1738, *voce* ADJUDICATION.

See Graham against Reid, 7th November 1785, *voce* GROUNDS AND WARRANTS.

See Rowand against Lang, 13th June 1738, *voce* CAUTIONER.

See Storie against Pollock, 9th December 1738, *voce* WADSET.

See Ross against Ross, 18th January 1751, *voce* SERVITUDE.

See NOTES.