

1772.

(M. 10805.)

BRUCE
v.
BRUCE.

JAMES BRUCE of Carstairs, - - *Appellant* ;
MISS ANNA BRUCE, - - *Respondent.*

House of Lords, 7th April 1772.

POSITIVE PRESCRIPTION.—Title of possession.—Objections to testing of deed.—Circumstances which elided such objection.

Vide Morison, p. 10805, for a full report of this case.

Infertment in the superiority of lands had been taken, with possession thereon for forty years of the lands themselves, the property of which was also in the same person ; but on a different title, viz. a title of apparency, the Court of Session held that this title was sufficient to acquire the fee of the lands by the positive prescription. There was a separate objection stated to the marginal notes of one of the deeds composing this title, as not being duly tested in terms of the act 1681. The Lord Ordinary pronounced this interlocutor : “ Finds that the pursuer has right to the Inch of St. Silvanus upon the positive prescription, and decern and decern accordingly.” On representation his Lordship adhered. And on reclaiming petition the Court pronounced this interlocutor : “ That the defender has condescended on acts of homologation sufficient to remove the objection, that the marginal notes in the marriage contract 1687 were not tested in terms of the act 1681 ; but in respect of the infertment in the person of Sir Thomas Bruce, on the precept of *clare* 1721, and of the infertment in the person of Sir John (the respondent’s father) on the precept of *clare* 1740 ; and of their possession of the island of St. Silvanus upon said infertments for more than forty years, find that the pursuer, as heir to Sir John, has right to the said island in virtue of the positive prescription.”

Against these interlocutors the present appeal was brought.

After hearing counsel, it was

Ordered and adjudged that the interlocutors of the 21st February and the 29th November 1769, and also so much of the interlocutor of the 6th December 1770 as is complained of by the original appeal be, and the same are hereby affirmed ; and that part of the interlocutor of 6th December 1770 complained of by the

cross appeal be varied as follows: after (that the de-
fender has) leave out (condescended on acts of homo-
logation) and insert (alleged matter) after (sufficient to)
leave out (remove) and insert (answer).

1772.

DEAS, &C.
v.
MAGISTRATES
OF
EDINBURGH.

For Appellant, *Al. Forrester, Dav. Rae.*

For Respondent, *Ja. Montgomery, Al. Wedderburn.*

JOHN DEAS and Others, Feuars in Prince's Street, within the Extended Royalty of the City of Edinburgh, and Proprietors of Houses there,	}	<i>Appellants;</i>
The LORD PROVOST, MAGISTRATES, and COUNCIL of Edinburgh,	}	<i>Respondents.</i>

House of Lords, 10th April 1772.

This was a bill of suspension and interdict applied for by the proprietors and feuars of the houses in Prince's Street, against the Magistrates and Town Council of Edinburgh, to interdict and prohibit the building and erecting houses opposite their feus, in Prince's Street gardens, then called the North Loch, in violation of the Plan and sales of these feus, and of the original proposals and resolutions of the Magistrates, held out, and agreed to, by them, in granting their feu rights. These resolutions were embodied in the acts of Parliament obtained for extending the royalty, which stated and described the objects to be, "to enlarge and beautify the town, by opening new streets to the north and south, removing the markets and shambles, and turning the North Loch into a canal, with WALKS AND TERRACES ON EACH SIDE." And the plan drawn out and adopted by the Magistrates and shewn to the feuars showed these grounds (Prince's Street gardens) so laid out for pleasure grounds and walks.

The Magistrates, in advertising the feus, further assured the feuars, that on taking the feus in Prince's Street, they would obtain the same, with perpetual right over the grounds between their feus and the Canal, or North Loch, under the proviso, that no building should be erected there.

On the faith of this *Plan* and these resolutions, the appel-