

has been Directed of it for some Just Cause, or hath abandoned it, and that he who hath carried it long time without Demanding his Debt, had rather received payment of it, or been convinced that nothing was due to him. And it is a just punishment of negligent proprietors who neglected to recover the possession of their Estates within a sufficient time. *Sic enim dicitur in scripturis sanctis non dormientibus l. 29 In fine In fine in fine.* The Roman Law makes a Difference between prescription in General, and *usucapio*, to Call for that *aliquid Caput et auctori usi*. That kind of Prescription distinguished by the Name of *usucapio*, is the acquiring the property of things by the Effect of time. Prescription signifies not only the acquisition of property, but also the Manner of acquiring and losing all sorts of rights and actions by the same effect of the time. Regulated by Law. But the word prescription is now Common by usage both to the Manner of acquiring and losing the property of things, and to that of acquiring and losing all sorts of right by the effect of time. Other Nations have borrowed the Law of Prescription from the old Romans, but have different rules among themselves as to that which is or is not subject to prescription, the times of Prescription and the persons against whom Prescription doth not Run. Of old there was no prescription without any Case *stat. lib. 2 fol. 12 § 12*. But it hath been introduced by Statutes.

Prescription is either positive, or negative.

Positive prescription is the way of acquiring a thing or right lawfully and honestly by peaceable and continued possession during the time regulated by Law, sometimes with and sometimes without a title. Those persons for others cannot prescribe what they possess in their own hands. Thus he who possesses Precariously *l. 2 C. de Praescrip. 30 vel 40 ann. Depository l. 17 § 1 De pose* A Creditor who has a pawn *l. 10 l. 11 l. 12 § 1 sign. l. 10*. An usufructuary, a farmer or tenant *l. 6 § 2 De precar.* Cannot acquire by prescription what they hold by these titles. For in order to prescribe, it is necessary to possess as Master, and in all these sorts of possession it is the Master who possesses by him who holds the thing in his hands. And they who hold the things by these titles, cannot without Enavery pretend to be proprietors of them. The heretable Bailiwick of an Earldom having after it was Erected in a Regality, Accepted a temporary Commission to be Bailie of the Regality without prejudice to his heretable right of the Bailiary of the Earldom, and commenced his possession by Virtue thereof: he and his Successors were found Incapable to prescribe a right to the heretable Bailiary of the Regality, which was found not prescribed even by a singular

Successor purchasing the office of Bailiary of the Earldom after the temporary Commission was Expired, and Continuing to Act as heretable Bailie of the Regality for the space of forty Years 9 July 1713 D. Monrose contra Maule of Ardincaple. Because the temporary Commission by which the possession commenced could not Establish an heretable Right nor have any more effect in Law than tacit Reservation after Expiring of a tack: nor could the Continuance of that possession be ascribed to any other title; and the singular Successor's acquisition of the Bailiary of the Earldom did not abandoning Maule's Possession his possession perpetually, to hinder him to prescribe beyond the bounds of that office.

Negative prescription is the way of losing a thing or right in Action, by omitting to demand it, or exercise it within the time limited by Law. Thus a Creditor neglects only, and all rights and Actions are lost, altho' that he who is Debtor of him should be in a Demand it not made of the Debt, or some benefit to be done to his right. Prescription is required only at the last moment of the time required for prescribing at the last moment of the last day, Year or Month up to prescription ought to be understood according to the ordinary Computations, which comprehend all the Moments of all the days necessary to make up the Year. Because the effect of Prescription is irreversible when it is once required: yet this favour is not Extended so far as to shorten the time that is necessary for Shipping proprietors of their Right. And that which can hinder the Prescription before it is acquired, ought to be favourably received for he that claims the owner in his right. Thus the long Prescription was not hindered for want of a day: that it was attested that *De Minimis non curat Praetor* 6 July 1671. M. Rae contra Lord M. Donald. The same rule of Computation obtains in France *Les Loix Civiles de Paris part 1 lib 3 fol. 7 l. 4 art. 3*. By the Civil Law, *Usucapio* ends at the beginning of the last day, the first moment thereof being Computed as one whole Day *l. 15 De Div. et temp. Praescrip.* But Prescription in Actions has not its effect, till after the last moment it Expired *l. 6 ff de acq. et Act. The Continual time Without Interruption is Computed in prescription; and not the profitable time only in which a Judicial Demand could be made while Courts of Justice are patents. Thus in the prescription of 40 Years, those Years in which Judicatures were not patent, or the troubles of the time war and Pestilence hindered Action, were not Discounted 30 June 1671. Bead Men of Magdalen Chapel contra Drysdale. Because the accidental Surcharge*