

of Justice could not be for any Considerable time. Sir George Henric observes on act 12 Par. 22 f. 6 Leaves it as an undetermined *Quid juris*, if Judicatures were that thro' such a Calamity for the most part of the 40 years. The time of a Successor of the Plaintiff to be Deducted by Express Law from Short prescriptions act 40 f. 1 Par. 4. & M. Act 11 f. 7 Par. 4. & M. The three years Allowed to Creditors of one Deceased for doing Diligence to affect his estate, payable to the Creditors of his Apparent heir act 24 Par. 1. Ch. 2. line *non tempus utilis* but *Continuum* and *Run even* Contra non Valentem agere v.g. against a Creditor of Deceased the term of payment is not Come 19 Decemb. 1675 De l'Escheator contra *Brinc*.

Possession to found the positive prescription may be continued not only in one person but also in several persons, as in the case of Executors or Administrators, and their Heirs or Singular Successors: the prescription is required to the heir or Singular Successor after the Possession of his father and his own, joined together. Acted the time regulated for Prescribing l. 14 s. 1. § de Prescrip. Praescrip. l. 2 § 20. If pro Empt. the Grantor of a piece of land having possessed some years by a back tack from the head seller, retaining a Declarator of Possession of the back tack, and Entered the possession; the Reversers possession by the back tack was joined with the head sellers possession to make up Prescription June 1713 Murray of Burythloun contra M^r 2^d Alan. When a heir who is either absent or Ignorant of his right does not take possession of the Estate till some time after the Succession has been Open he will never the less join to his Possession that of the Deceased, and even the time of the Interval between the falling of the Intestance, and his Entering to the possession of it l. 31 § 5. ff de Usuris. & usucap. For the Estate is presumed to the future heir, and is as it were possessed by the Intestance itself which holds the place of Masters. But the possessions of diverse possessors who succeed the one to the other, are joined only in the Cases where they follow one another without Interruptions. for if there be any Interval of another possession of a third person who has Interrupted those possessions, the possessions which had preceded the said Interruption, would be useless to the last possessor l. 20. ff de usuris. & usucap. de Prescription is required only by a Continued possession, when one Enjoys peaceably during all the time regulated for Prescribing. If the Beginning and End of ones possession be

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proved, he is presumed *Provis tempore possedisse*, and to have continued his possession *Corp 200. juris Prud. Florens. part 2. Const. 3. f. 26. Nam probatis Duobus per trienis, Presumuntur Tredecim.*

Pona fides or a good Conscience and a Lawful Origin of Possession, or a sincere Belief in the possessor of his having a right to what he possessed, and Ignorance of any other Title to it, is Required in the Short, the not in the Long Prescription. *Stair lib. 2. Tit. 12 § 5. 11. & 19.*

Prescription commonly runs against Tenants, unless they be known against it by a Positive Statute. *Witham contra. act 2. Par. 2. Ch. 2.* As is done in the Statute of the Long Prescription. *Prescription*: which is agreeable to the nature of positive Tenure. The true the Long Prescription of personal rights is not sustained against Princes, the Heir by not Expressly Excepted from it act 10 Par. 4. f. 3. But the Heir is not bound, because the Prescription to Grant is not from the first origin, probably happened thro' inadvertence at the opening of the Law. Prescription doth not run against a Heir, unless the result of a Title. *W. de usura. pag. 135.*

A Debt contracted in England and due to a person who has come to reside in Scotland, is not subject to the Prescription of the Law of Scotland. *Thompson contra. G. & others* were not Curators. But afterwards coming to reside in Scotland, the quasi contract were found to prescribe according to the Law of the place where the obligation arose. *July 1717 William contra. Fort Wright.*

In Dubio a Clause is to be taken in that sense which saves from prescription. Thus a writ blank in the Day and Month, and Expressing the Year, was understood to be dated the end of December that Year, in order to Exclude prescription 23 Decemb. 1633 *Aghilvie contra Lord Ogilvie.*

Some things prescribe simply, others as to some Certain Effect only, viz. the Manner of proof, or the Import of a presumptive right.

The times of prescriptions are marked by Arbitrary Rules Different in Different places. The Learned Mr Bonnal sets forth those Established in France *Les loix Civiles de Goum. 1. part. liv. 3. Tit. 4. Pr.* Prescription in the Common Reception which is both in the Law of England, is no Limited time but such a portion of time as Exceeds the Memory of Man *Code 1. Inst. 113. 114. 115. Bovel Inst. lib. 2. Tit. 16. Bacon de Leg. & Consuet. Angl. lib. 2. c. 22.* But the Prescription by the Common Law of England