

albat the Masters were never cited to the pronouncing of any Decree for such payment and never consented to any such thing: In respect their tacit Consent was presumed from their long Silence and not interrupting the Pretenders upholding the same for 40 Years 21 Feb. 1687 L. Porrie contra E. Panmure, Flowerhous, and their Tenants. By this positive prescription of 40 Years, pensions M. Lewis ibid. This day and all other Services Stair ibid. § 24 are acquired. Infeftments of life rent for Security or Relief, are rendered secure by this prescription Long tenets of lands or tithes are after 40 Years Possession become irrevocable during their time Stair ibid. § 21. & 23 Upon the account of Nullities or objections 19 July 1675 ibid. Cases of Aberdeen contra E. Northesk and others. One possession for 40 Years of any thing as part and partment of the Subject Continued in his or her person, gives a right thereto by Prescription 7 Feb. 1672. Quilley contra E. Eggington 17 Novemb. 1671 Young contra Farmichart. About the Lands so possessed had never had time been a separate tenement, or were possessed before the 40 Years by a back let to the party prescribing right, which was not found to continue the Pretenders possession during the Years of Prescription Godwin Decretal. § 20 Feb. 1675 C. of Murray contra Wems 27 Novemb. 1677 Grant contra Grant unless Infeftment proceeded upon a warranted charter which renders any land or other thing without the bounding to the Prescription of 17 Novemb. 1671 Young contra Farmichart. The positive prescription of heritable right of property, doth Exclude not only other Infeftments of property, but also Annuities pensions and other rights, which the possessor will thereby be free of 21 Jan. 1634 Forrester contra Forrester of Both. Kinner Stair lib. 1. c. 12 § 17. A Right for tithes with this prescription, cannot be reduced or transferred upon Nullities, except such as are substantial and essential as the want of an Esk in a tack, or a Symbol in a tack Stair ibid. § 25. The Canon Law doth not allow, that an unjust possessor can ever prescribe. fin. x. de prescript. Reg. 2. de Reg. in c. Because the length of time doth not secure unjust possession from the Guilt, but on the contrary their long possession is a continuation of their Injustice. But in Scotland to acquire a Prescription by 40 Years possession, it is not necessary to have possessed honestly and fairly, or that the possessor was persuaded that he had a Just cause of possession, and was ignorant that what he possessed did belong to another person. For bona fides and Lawful possession are presumed presumptions Juris de de Jure in hinc who possess long by a legal title without any obligation upon him

to make good his right or even to Declare the Origin of his possession Stair ibid. § 11. & 19. Which is not so to be understood, as if our Law justified a possessor who knowingly possesses what he knows he has no right to in point of Conscience. But only that the Civil Law does not permit that possessors be troubled after a long possession with disputing how they began to possess: because the Pretence of Inquiring after unjust possessors would Disturb the Peace and quiet of Just and Lawful possessors.

By the negative prescription, all personal obligations (both pretending personal Actions and Decrets) are extinguished and of no avail, if the parties to whom they are due having notice thereof do not within 40 Years reduce them into a written Document thereon and signify Bonds, and so take in a regular manner and manner to all personal obligations and Decrets, both of the same kind as of other things or contra. Injunctions of Remission, when a Decret is or Credit held on March 1707 Murray contra Young of Drumbrone Contracts of Marriage when upon Marriage followed by Novemb. 1630 L. Lamer contra Colingh. The Decret is not valid, unless a Contract of Marriage doth not prescribe, nor annul, being 1627 Lindays contra J. Baiguny and Decretal. In the former being in effect obligations. Sir George Mackenzie Decretal. Injunctions of Decrets do expire only in 40 Years, because prima et infra he presumed that in that time he might have done what he would have done his own Decret is ready, and the obligor of the Decret may have lost his means of proof, where he could have no place the same if sooner Quare cited 29 April by the Civil Law, in place whereof our Reduction of Decrets is some way to have been made within 10 days, other wise the party would understand to have acquiesced in the contract Nov. 23 1681. H. de C. de appella 3/4 wrongs the Commerce of the Nation that no Decret within 40 Years can be safely transacted for fear of a Reduction in that time. And the Mann may for 40 Years be ignorant of his own right to latent obligations, it is not supposable he could so long be ignorant of what belongs to him by Decrets passed in public Courts. Vicarage by the Act so prescribe, both as to total Immunity 24 Novemb. 1665 B. of the Isles contra Fishers of Greenock. And as to the Manner of Giving in kind and Quantity 11 Feb. 1665 Scot of Thirlstone contra Scot of Broad Meadows. According to the