

Apparent heir, is not deduced to hinder prescription against a Creditor where the heir was served and Returned within the year 16 July 1708 Thomson and Kay contra Ed. Lithgow and his Curators.

A right granted Contrary to an Express standing law, as Alienation of the Crown and annexed property, without a previous Disposition in Parliament, cannot be secured by prescription Mc Kenzie observ. on act 4 Par. 11 J. 2 Because quod non est alienabile non est prescripibile. The prescription run against Laws Established for the Common public good of the Nation which notwithstanding continued in Vigour 27 January 1681 Jack contra Goun of Sterling. By the Law of England, no man can prescribe against an Act of Parliament Coke Inst. 113.

The positive prescription of heritable rights runs against the King as well as Subjects. For in the Law Cacl. 12 Par. 22 J. 6 there is no exception in favour of the Sovereign; on the contrary it was expressly said, those who have possessed 40 years in the terms of the Statute shall not be troubled by his Majesty or any other: lest it should be pretended, that the Neglect of the Kings officers should prejudice his Majesty which was cautioned formerly act 14 Par. 16 J. 6. because positive prescription is a General Remedy Introduced for the peace and tranquillity of King and people, and to secure them of so much Dominion as they have non pretendit, as far as they possess which is the same to the King as to another. Sir George Mackenzie lib. 3 fol. 7 § 18 Excepts from this prescription the Kings prerogatives whereof the farm duties have been counted for in Exchequer since August 1455: but cites for this Exception Cacl. 12 Par. 11 which allows only the course of the 13 years prescription of Sumers Dispositions of such property of the Crown to be interrupted by such clamations in Head of Particular Filitions. However Sir James Mackenzie answers to Dukes doubts thatward lands. It is prescription & it is prescription against the King seems also to think, that the King is not excluded by the Positive Prescription of Real rights from lands of the Annexed property as to which his Majesty is held to be minor. The Question whether the Negative prescription could run against the Sovereign, was argued but not Resolved July 1712 Monerief of Mornipea contra Heirs and Creditors of Ballo. The Reasons urged why it should not run were, 1. of the Negligence of the Kings officers in pursuing cannot prejudice his Majesty act 14 Par. 16 J. 6. 2. Since the Act 1617 Cacl. 12 Par. 11 J. 6 makes the Positive prescription to take place both against

the King and Subjects; the Act mentioning the King in the Clause therein Concerning the Negative prescription, Implied that the Negative prescription was not Intended to be effectual against his Majesty. & Contra it was pleaded, 1. of the Law concerning the Negligence of the Kings officers is derogated from by the Act 1617 Stat. lib. 2 fol. 12 § 29 Mackenzie observ. on Act 14 Par. 16 J. 6. 2. of the Positive prescription being upon the general Statute: Live of the Statute Intended against the King as well as others: It was said that to have repeated the persons against whom the Negative prescription should obtain. And since neither King nor Subject is mentioned Expressly in the Clause concerning that prescription, the Words Intended thereof must be understood to concern all the persons mentioned in the Statute, because exceptions are designed to that Statute but extend to the Sovereign: And therefore formal Negation in that Statute was good. Sir George Mackenzie doubts whether the prescription of Prescription Cacl. 12 Par. 11 J. 6. extends to the King as well as others, it is not so great a hardship to the King as to the Subject: but there is no law. By the Law of England, no man can prescribe against the King Cacl. 12 Par. 11 J. 6. ^{for no man can prescribe against the King} every thing which belongs to the King is not alienable, and is not to be acquired even by possession of a long time, Continuance of Francis, bearing date 10 June 1530 & a like Statute 21. Jan. 1534. 1. Lib. 2 fol. 7 lib. 5 fol. 2. Sir George Mackenzie observ. on Act 14 Par. 16 J. 6. doubts of the positive prescription of Real rights can be applied to them, for not Naturalibus: because the Law Cacl. 12 Par. 11 J. 6. appoints the Kings Officers possession to have to run against by Prescription.

By the Civil Law, some things are imprescriptible, as things Sacred, Religious or publick § 1 Inst. De usur. sup. l. 9. § 45 § 1. Things Robbed or stolen § 2 Inst. De ac. sup. l. 1. § 1. Sir George Mackenzie Inst. lib. 3 fol. 7 § 18 objects, that it is not clear from Statute or Decisions, whether any such things may be prescribed in our Law.

The Negative prescription of 40 years runs against the Church & Mortifications to pious uses 30 June 1671 Beard men of Magdalen Chapel: pel contra Drysdale 9 Decemb. 1707 Magis vales of Aberdeen contra Irving of Kincauldie Stat. lib. 2 fol. 12 § 15.

Personal bonds and obligations prescribe from the term of payment, and not from the date 17 Feb. 1665 Butler contra Gray of Balbrino 23 June 1675 Bruce contra Bruce 19 Feb. 1680 Lutefoot contra Preston. Because till the term of payment is elapsed, the Creditor hath no Interest to pursue, and so cannot till.