

up to the point: seeing before Elapsing of the 20 Years the Elder Brother Returned, and had appoyzinged against him as charged to enter heir, and the appoyzer was in possession; which was Equivallent as if the elder Brother had been Returned: nor was there any necessity upon the appoyzer (who was in possession by his appoyzing Expoyred) to take Notice of the second brothers Return till it was made use of against him. And Sir George himself in his other place (Supplement to his observ. on d. act. 13) Both fairly retract his opinion, by saying that all Returns even at the Instance of the Heir of Kin, and where Heirs of the same kind Compete, are Irrevocable after 20 Years, and that the Lords of Session seem'd to Declare so 25 Novemb. 1665 Younger comes Johnston. The same learned Author (Observ. on d. act. 13) thinks, that albeit Returns may be Reduced to the prejudice of the person served heirs; yet they cannot in favour of Commerce be Reduced to the Prejudice of singular Successors, who Acquire bona fide from the person served, and could not know that the Returns would be Revocable. But in another place (Supplement to his observ. on d. act. 13) he Corrects himself, and would be understood to mean only singular Successors Acquiring Rights bona fide before the statute Introducing this prescription of 20 Years, who ought not to suffer for prejudice by a supervening law. Perhaps we may not find properly Distinction betwixt the Annulling a Return upon the Supervening Appearance of a nearer heir, whose Existence might probably have Escaped the purchasers Knowledge; and the Voiding it upon the Account of some obvious Nullity therein, as the want of some one or other essential Solemnity, which the purchaser might have noticed, and has himself only to blame that he oversaw it. But tho a Return cannot be Directly Reduced after 20 Years, it may Indirectly: for by Reduction within 40 Years of any writ where upon the Service proceeded, the Return will fall in consequence Mackenzie observ. on act 54 Par. 5 J. 4.

Holograph writes, or Subscriptions in Account books, prescribe after 20 Years, unless the truth there of be proved by oath of party act 9 Par. 2 sect. 1 Ch. 2. Which is not to be understood of the verity of the Debt, which may be proved by the Parties at any time within 40 Years Steir lib. 2 fol. 12 Bull. But only of the verity of the writ and subscriptions.

Tit. 3.

Prescription of 13 Years.

Thirteen Years Possession, called Decennialis & Triennialis possessio: This is a presumptive title, sufficient to maintain a Church man in possession of his Benefice, till a better be shown in another Competitor. Because Church men are supposed to be more taken up with Spiritual than worldly Concerns; and less solicitous to preserve the civil rights of the Church, which they hold but as tenants for life, and may be easily lost in passing thro the hands of many successive incumbents. Vid. Supra pag.

Tit. 4.

Prescription of 10 Years.

The Legal Reversion of Appoyzings act 62 Par. 1 Sep. Ch. 2 and General adjudications where the debtor doth not procure a progress act 19 Par. 2 sect. 3 Ch. 2 prescribe in favour of the appoyzer and assigner in ten years after the date of the deed, and in favour of the debtor apparent his Acquiring right to acquire Appoyzings or adjudications in 10 years from the Legal Reversion both not to prescribe against Minors act 6 Par. 23 J. 6. The Lord Dirlatoun, albeit he thinks that Actions upon contracts do not prescribe against fictitious persons and Deeds, tho a Legal or other Limited Reversion doth prescribe Against them. Because it is only but Limitation to a certain time producing limitation effectum, a Limited action during the said time. And the person whose right is under Reversion should not be impleaded in case by the Condition of the party who has right to the reversion. But Sir James Stuart Answers to Dirlatoun doubts Tit. Reversions Competent to Deeds; dis proves that Distinction, and says, that neither Action nor Reversion doth prescribe against fictitious persons: Seeing in Both cases the Running of a certain Space of time hath an Exclusive effect in Law, and should not run in equity contra non Volentem legem; which is to hard ship upon the Creditor, the Reversion being favourable, and the Debt in the meantime secured.

Actions of count and Reckoning direct and Contrary, betwixt minors and their tutors or Curators, prescribe, if not insisted in within 10 years after the Minors Majority, or death in Minority. But this prescription runs not against Minors act 9 Sect. 6 Par. 4 J. 4.

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