

No 22.

it would be incumbent on them, in order to subject the defender, to show, not only that there was a deficiency in the *cumulo* valuation of the county, but also to point out certain lands for which no assessments were paid; and this they cannot do with regard to the defender's lands, after he has been assessed for 40 years, according to a *cumulo* valuation for the whole lands possessed by him.

Answered, When a proprietor sells a part of his estate, the part sold and the part retained are each liable to public burdens, in proportion to their value, though, till a disjunction of the valuation takes place in the cess-books, they continue to be levied *pro indiviso* from the whole lands. No agreement of the parties can affect the right of the public in this respect. In the present case, however, the purchaser is expressly bound to pay the public burdens. And no length of time can prevent the pursuer from insisting on his doing so. For, although all claims arising from a bond or other obligation, of which payment or performance can be exacted at once, may be lost by the negative prescription, it is a settled point, that wherever the obligation consists solely in certain annual prestations, as in the present case, each annual payment runs a separate prescription, but the right of exaction in future cannot be lost *non utendo*; Erskine, b. 3. tit. 7. § 13.

THE LORD ORDINARY sustained the plea of the negative prescription, both against the claim for bygone payments, and for relief in future.

On advising a reclaiming petition and answers, it was

Observed on the Bench, Even though there had been no stipulation to that purpose, the lands sold must have born their proportion of the public burdens, and the claim of relief cannot be lost by the negative prescription.

THE LORDS UNANIMOUSLY altered the interlocutor of the Lord Ordinary, and repelled the plea of prescription. See PUBLIC BURDEN.

Lord Ordinary, *Swinton*. Act. *Dean of Faculty Erskine*. Alt. *C. Hay*. Clerk, *Pringle*.
D. D. *Fol. Dic. v. 4. p. 91. Fac. Col. No 102. p. 227.*

S E C T. III.

Of the Act 28. Parl. 5. Jas. III. 1469, which enacts, that "Obligations" not followed out within 40 Years shall prescribe.

No 23.

Before the act 1617, heritable titles could not prescribe, notwithstanding the terms of the act 1469.

1585. *February*. LORD CATHCART against LD. of GADZAT.

THE Lord Cathcart, by virtue of a bond and obligation made by the Laird of Gathart, goodsir to his goodsir, pursued the Laird of Gadzat for the deliverance of a reversion recording to the said bond. It was *alleged* by Gadzat, That he

could have no action upon the bond, by reason of the act of Parliament James III. cap. 36. all obligations to be pursued within the space of 40 years, or else to prescribe; and so the said bond being an obligation, bearing the words binds and obliges, ought to prescribe. To the which it was *answered*, That the present bond could not be comprehended under the act of Parliament, because it was for the deliverance of a reversion; and a reversion which was an heritable title could not be comprehended under the act of Parliament; no, neither a bond for the deliverance of a reversion *quia fuit ejusdem naturæ*. THE LORDS found by interlocutor, That the present bond, because it bore for the deliverance of a reversion, could not prescribe nor come under the act of Parliament.

Fol. Dic. v. 2. p. 98. Colvil, MS. p. 415.

No 23.

1589.

A. against B.

THERE was an obligation sought to be registered, which contained the discharge of a reversion, and to make lands redeemable. It was *alleged*, That it was 50 or 60 years since the making of the said obligation, and so, according to the act of Parliament, prescribed. *Answered*, That because the obligation and bond thereof were heritable, *et sapiebant naturam hæreditatis*, it could not be comprehended under the act, and so was found by the Lords.

Colvil, MS. p. 441.

No 24.

1618. March 17.

A. against B.

PRESCRIPTION of 40 years sustained *contra majores* pursuing for tutors accounts.

Fol. Dic. v. 2. p. 98. Kerse, MS. fol. 244.

No 25.

1618. July 3. GEORGE COURIER against LA. of LAURISTON.

THE LORDS fand, That a decret obtained *in anno* 1615 fell not under prescription.

Kerse, MS. fol. 244.

No 26.

1622. February 26. HAMILTON against LO. SINCLAIR.

IN an action by Sir George Hamilton against the Lo. Sinclair for payment of L. 100 yearly of annualrent, conditioned and obliged to be paid to the Lady

No 27.
Found, that a mutual contract was not liable to the negative prescription.