

and Beatrix Johnsons' possession, albeit it was *alleged*, that Stephenlaw Porteous, from whom Young's right flowed, was a stranger, living in Salvonia; albeit he was *origine scotus*, and that he was not obliged to know the municipal statute of Scotland, whereby right of lands did prescribe to the prejudice of the blood.

Newbyth, MS. p. 42.

No 164.

1679. *January 21.* FRASER *against* HOG.

A WIFE'S infertment, granted by her husband, who was not himself infert, has not the benefit of the positive prescription by the husband's possession, it being necessary to validate her infertment, that she herself possess 40 years after his death.

No 165.

Fol. Dic. v. 2. p. 112. Stair.

*** This case is No 79. p. 10784.

1682. *December.* M'PHERSON *against* M'INTOSH of Stream.

A SUPERIOR having feued some lands to one who continued thereafter to come to the superior's mill for eight or ten years, and having after these years feued the mill to another, *cum multuris solitis, &c.*—the first feuar continued to go to the mill, and to pay insucken multures for the space of 34 years; whereupon the heritor of the mill raised a declarator of thirlage against the heritor of the lands.

No 166.

Alleged for the defender; That he had his lands free, and the pursuer could only lay claim to 34 years possession of astricted multures, which is the age of his title to the mill, and could not make up prescription.

Answered for the pursuer; That the years of his author the superior's possession must be reckoned to make up the prescription, and accresce to the pursuer.

THE LORDS found, That the right and possession of the superior, the common author, was to be conjoined to the pursuer's right, to make up the prescription of 40 years; and declared the defender's lands to be astricted to the pursuer's mill.

Fol. Dic. v. 2. p. 112. Harcarse, (PRESCRIPTION.) No 763. p. 216.

1701. *December 3.* FORBES *against* UDNEY.

No 167.

IN a proof of 40 years possession of a salmon-fishing, a party proved his possession as to fishing by angle, speer, and wand, and that it was accounted