

No 187.

doth not, in the statutory part, deduct minority, yet the same is to be understood excepted by the tenor of the act, in so far as it doth narrate and extend the 13th act, Parl. 1494; whereby it was statute, that summons of error against members of inquest in services, should be pursued within three years, the person being of lawful age; and that because the meaning of that act of prescription related only to the persons of inquest, and was not to prejudice the righteous heir of the succession in the right of blood, therefore it was provided, that the said act should not prejudice the nearest heir to pursue a reduction within 20 years; so that the design of the last act being to clear and extend the former, the exception of minority in the first act is to be understood as repeated in the last:

*2do, et separatim,* The said act does not at all concern this case; for that act relates only to erroneous services, where a remoter degree is served in prejudice of the nearest heir in blood, which may be quarrelled by the nearer heir, at any time within the space of 20 years, and so relates only to the case of competing heirs; whereas here there is no competition, but the nearest heir pretends to repudiate the succession, as wanting warrants, or to her enorm lesion.

“THE LORDS found, that the act of Parliament implied an exception of minority; and also found, that it did only concern the case of competing heirs, and declared they would hear the parties in their own presence on the other point, whether Poury, as creditor, was bound to produce the warrants of the service, which was necessary to be determined for deciding the cause, in respect that, though the prescription was not found to be run, yet the service not being quarrelled *intra annos utiles*, it was contended, there was no place now to revoke; and therefore the Lady did insist to quarrel any warrant for serving her, and craved the same to be produced.”

*Dalrymple, No 24 p. 29.*

1714. *January 15.*

ANNA HELENA EDMONSTON *against* JAMES EDMONSTON of Broick.

No 188.

Found the reverse of Hamilton against Hamilton, No 186. p. 10936.

IN an action at the instance of Anna Helena Edmonston against James Edmonston, for payment of a holograph bond granted by the defender's father to the pursuer's father in *anno* 1665, the LORDS found, *imo*, That the said holograph bond was not liable to the prescription of 20 years, introduced by the act 9th Parl. 1669, which extends only to holograph writs made after that statute; *2do*, They found that inhibition used, the bond is a sufficient document to interrupt prescription.

*Fol. Dic. v. 2. p. 113. Forbes, MS. p. 15.*