

horning cannot interrupt the prescription, because the same was not given to Alexander Home the defender's predecessor, but only to William Home the other co-principal, which cannot interrupt the prescription as to Alexander Home, who never knew any thing of such a charge.

No 354.

*Replied* for the pursuer; *imo*, It is true that minority is not, in the strictest sense, an interruption that cuts off prescription, so as to make it begin again from the time of the interruption, but only stops the course of prescription during the years of minority. *2do*, Seeing minors are just as ready to neglect the establishing titles in their person to their heritable and moveable estate as to do necessary deeds for interrupting of prescription, it imports not whether the pursuer's author's titles were established by confirmation or not; and, as a summons executed by an apparent heir before his service was sustained to interrupt prescription, 24th July 1672, Edington *contra* Home, Div. 16. *h. t.*, much more must it be interrupted by the apparent heir's minority. *3tio*, Though, in order to interrupt the positive prescription founded on the act of Parliament 1617, it be necessary to certiorate the person in whose favours it is running, because there it is his own possession that acquires him the right; yet the prescription of obligations *non utendo* in virtue of the act 28th, Parl. 5. James III. may be interrupted by taking any document thereupon; and, it cannot be said, that a person who chargeth or pursueth one of several co-principal debtors in a bond, hath not taken a document upon his right, or hath not used it.

THE LORDS repelled the defence of prescription.

*Fol. Dic. v. 2. p. 122. Forbes, MS. p. 29.*

1746. June 25.

WALTER RUDDIMAN *against* The MERCHANT MAIDEN HOSPITAL of Edinburgh.

WALTER RUDDIMAN printer in Edinburgh, assignee by progress to a bond originally granted by Thomas Young son to Robert Young merchant there, pursued the Merchant Maiden Hospital of Edinburgh as being liable in the debt, by having accepted a gratuitous disposition from one of the representatives of Thomas Young.

The defence was prescription; and the reply, the minority of Thomas Smith, one of the intermediate authors to the pursuer.

*Objected*, That Thomas Smith having right by assignation, his minority could not be deducted, because the assignation not being intimated, the right was never vested in him, but remained in the cedent till the prescription was run.

No 355.  
A right being assigned to a minor, his minority is to be deducted from the prescription, though the assignation has not been intimated.

No 355.

*Answered*, That all rights competent to minors were saved to them by the statute; and it was only in competition with arresters, or other assignations intimated, that an unintimated assignation was defective.

"THE LORDS found, that there was sufficient presumptive evidence of the minority of Thomas Smith; and repelled the objection, that the assignation was not intimated."

Reporter, *Justice-Clerk*. Act. *A. Macdouall*. Alt. *C. Binning*. Clerk, *Gibson*.  
*Fol. Dic. v. 4. p. 111. D. Falconer, v. 1. No 122. p. 150.*

\* \* See further in this cause 30th July 1746, *voce* PRESUMPTION.

1747. *January 20.* LADY INVERAW *against* The EARL of BREADALBANE.

No 356.

The minority of one or more creditors only interrupts the prescription of the interest that was in the minor.

WHERE a pursuer's minority was pleaded for eliding prescription of a moveable debt, it was *answered*, That during part of the time in which the pursuer was minor, she had brothers and sisters who had an equal interest with her in the debt pursued for; and though they were now all dead without having made up titles, whereby the right to the whole had devolved upon the pursuer; yet as the brothers and sisters, who were in the right of apparency while they lived, were majors, and that the years of prescription expired before their death, the same was effectual as to their proportions of the debt.

THE LORDS sustained the answer, and found, "That the minority of the pursuer did only save the interest that was in her during her minority."

*Fol. Dis. v. 4. p. 111. Kilkerran, (PRESCRIPTION.) No 12. p. 421.*

1754. *December 6.*

Captain HAMILTON BLAIR *against* ROBERT SHEDDEN and Others,  
Feuers of Kerseland.

No 357.

Minority is deducted from the years of the positive prescription of real rights.

THE question between the parties was, Whether, in computing the positive prescription of real rights, the years of minority are to be deducted?

*Pleaded* for Shedden and others, That the years of minority are not to be deducted appears from the reasons following:

*1mo*, According to the latter feudal system, land could only be conveyed by writing. If the vassal could not produce titles in writing, connecting him with the superior, the land returned to the superior. Hence a multitude of titles was necessary, their number must have increased daily, and they might often chance to be lost or mislaid. To remedy these inconveniencies, the act 214. Parl. 14. Ja. VI. 1594, dispensed with the production of many of these titles