

wholly groundless here; for to keep up claims of rents or ministers stipends, mill-multure, house-mails, merchants or tradesmens accounts, for 30 or 40 years, under pretence of compensation, would not only evacuate this quinquennial prescription introduced in favours of tenants' rusticity, but all the other short prescriptions provided by law. The consequence of which doctrine is so dangerous to our securities, that it needs little illustration. And could he give a more categorical answer, than to tell any rent they owed was all paid to Sir George, his creditors, or factors? that being as intrinsic and essential a quality as any can be. THE LORDS considered, if the possession and rent had been instructed by a written tack, there might have been more difficulty; but all being referred to oath, both the possession and rent, he might very well depone if it was resting owing; and therefore repelled the compensation, and refused to divide his oath. In some cases, where masters owe money to their tenants, they allow them to retain their rents till they be paid. But it did not appear there was any such paction here. Neither did Sir George's strait circumstances at that time leave ground to presume that he would want his rent so long.

No 391.

Fol. Dic. v. 2. p. 126. Fountainhall, v. 2. p. 709.

*** Forbes's report of this case is No 138. p. 2677. *voce* COMPENSATION.

S E C T. VI.

The effect of Prescription cannot be obtained by a person against himself.

1695. December 31. INNES *against* INNES of Auchluncart.

THE investitures of an estate, standing in favour of heirs whatsoever, the proprietor, *anno* 1641, executed a bond of entail, in favour of heirs-male. From this period, the heirs-male continued to be the same with the heirs whatsoever, till the 1692, that they came to split; and then the heir-male claimed the estate upon the said bond of tailzie. The LORDS sustained the defence of the positive prescription, there being a connected series of services, in favour of heirs of line, standing together for 40 years since the date of the bond, which established the right of the heirs of line.

No 392.

Fol. Dic. v. 2. p. 126.

*** This case is No 386. p. 11212.