

found that the immunity was not proved; and so the second point was not considered. *Item*, The LORDS found, that the master's rents, *viz.* the Abbot's feu-duties, in victual and horse-corn, paid to the Abbot, (not being converted,) was free of multure. Though it was controverted by several, and not determined, if horse-corns, spent upon labouring horses, should be free.

No 426.

Thereafter, upon the 14th July 1688, the LORDS found, that the ancient barony being now divided into many hands, the decreets of abstraction for both, (in respect of the constitution by writ,) against several of the heritors for diverse years, did interrupt even against the other heritors not contained in the decreets *quoad* barley. And the LORDS inclined to find, that the taking new charters from the Abbot's successor, Lord Tweeddale, within the 40 years, containing the general astriction of corns of all sorts, was an interruption of the freedom, though there was no act or document of the pursuer heritor of the mill, but of the superior.—And 20th July 1688, the LORDS adhered to the promiscuous interruption by decreets.—*Item*, Found that teinds not being *decimæ inclusæ*, or converted, or valued to money, therefore ought to be free of multure.

This practique is not so very clear.—The pursuer was Thomson of Mildeane.

*Fol. Dic. v. 2. p. 129. Harcarse, (MULTURES.) No 730. p. 206.*

1696. June 6.

Mr JOHN GUTHRIE *against* NISBET of Dirleton.

MR JOHN GUTHRIE pursues Nisbet of Dirleton for 1000 merks, contained in a bond granted by the deceased Sir John Nisbet and Craigtinny, both whom he represents. *Alleged, imo*, The bond being dated in the year 1650, was prescribed. *Answered*, Annualrents had been paid within the 40 years, which was a sufficient interruption of the prescription. *Replied*, Any annualrents paid were only by Sir Patrick Nisbet, as factor for Craigtinny's tutors, when he was minor, which cannot prejudice him, unless it be instructed that he either had a special warrant to pay it, or else that it was allowed in his chamberlain accounts; otherwise, factors might constitute debts on their constituents without their knowledge; and though *apocha trium annorum* be a presumptive discharge of all precedings, yet three consecutive discharges given by a chamberlain ought not to have that privilege. Yet see Stair Instit. Lib. 1. Tit. 18. in the case of the Laird of Wedderburn against Nisbet, No 7. p. 7181. and that the factor's discharges operate against the constituent for years within his commission.—THE LORDS, considering this was no constitution of a debt, but the preserving it against an odious prescription, thought the factor's paying the annualrent, [interrupted] (especially being a tract of several years payment,) seeing the act of Parliament James III. requires only the taking a document to stop pre-

No 427:  
Held to be sufficient interruption of prescription, that the factor for the tutors of one of the obligants in a bond had paid annualrent.

No 427.

scription, and that *talis qualis insinuatio* is sufficient to interrupt. The second defence was, That Sir Patrick Nisbet having paid this debt *in anno* 1664, he took an assignation thereto from Cockburnspath, the creditor, in Yeaman of Dryburgh his brother-in-law's name, and caused him in 1670 give a blank translation, wherein now Mr John Guthrie's name is filled up; and that it could not be originally there, is evident from this, that he is designed "Writer to the Signet," to which office he was not admitted for more than ten years after; and, therefore, they offered to prove by his oath, that he got this translation from Sir Patrick Nisbet; and if he acknowledged that, then they offered to prove, that Sir Patrick was factor for Craigtinny in 1664, when the debt was paid; and so it must be presumed it was out of the minor's own estate.—*Answered*; This was no way relevant to take away Mr John Guthrie's right, who had it for an onerous cause; and *esto* his name had been lately filled up, yet he was not obliged to know that Sir Patrick had been the debtor's factor; and though a tutor, *ante redditas rationes*, cannot validly assign, yet his factor is not so incapacitated nor bound up; and, therefore, he would not suffer Sir Patrick to depone, but it could only be loosed *scripto vel juramento* of the pursuer. Some of the Lords inclined to cause examine Mr John Guthrie before answer, from whom he received the said translation, for what cause, and at what time his name was filled up therein; and on his condescending, then to see how far Sir Patrick's intromission, as factor, would extinguish this bond, as presumed to be with the pupil's means. See Stair, B. 1. T. 6.; and Durie, 18th July 1635, Edmiston, *voce* TUTOR and PUPIL. But the plurality considered, that though, in some cases, where trust or fraud appear, they used such expiations *ad rimandam veritatem*, yet there being no relevant allegiance made which would meet Sir Patrick, *esto* the right of debt were in his person; therefore, they repelled the defence *in terminis*, as it was proponed; and only found it relevant to be proved by the pursuer's oath, that he either had it in trust for Sir Patrick's behoof, or without an onerous cause; which being, then to try if they would prove *scripto vel juramento* of Sir Patrick, that he paid this out of the minor's estate, and by his intromission therewith when he was his factor.

*Fol. Dic. v. 2. p. 128. Fountainball, v. 1. p. 718.*

No 428.

A process of forthcoming on a sum libelled, in general does not interrupt prescription, *quoad* a particular bond.

1699. February 16. MENZIES of Pitfoddels *against* FORBES of Tolquhon.

MENZIES of Pitfoddels pursues Sir Alexander Forbes of Tolquhon, on this ground, Sir Alexander's father owèd one Mitchel in Aberdeen, 1000 merks by bond, dated in 1638. Pitfoddels being creditor to this Mitchel, arrests in Tolquhon's hands, and obtains a decret of forthcoming against him, wherein a term was taken to produce him, and he holden as confessed; and for that sum Sir Alexander is made liable as representing his father on the passive titles.