

1716. July 4. JOHNSTON of Corhead *against* JOHNSTON of Newton.

No 40.

IN a declarator of non-entry, the superior, for his title, produced a charter under the Great Seal, dated 1648, with a precept furth of the Chancery the same year, but without any infeftment till the year 1714, that the pursuer established a right to the said precept by a general service, and thereupon infeft himself by virtue of the act of Parliament 1693, giving force to precepts of sasine after the granter's and receiver's death. It was *objected* against this title, That the precept was fallen *non utendo* by the 40 years prescription. *Answered*, That it being *meræ facultatis* for the obtainer of a precept to take infeftment thereon or not, precepts cannot prescribe, which was sustained.

*Fol. Dic. v. 2. p. 98. Bruce.*

\*\*\* This case is No 6. p. 3170, *voce* DEATH.

1731. December 7. Lord DUN *against* TOWN of MONTROSE.

No 41.

A RIGHT of constabulary which had been long in desuetude, and not exercised by any one act of jurisdiction for many more than 40 years, was found to fall by the negative prescription, and that it was not *res meræ facultatis*. See APPENDIX.

*Fol. Dic. v. 2. p. 99.*

1747. January 21. Lady INVERAW *against* Earl of BREADALBINE.

No 42.

THE right to reduce a deed on the head of death-bed, does not prescribe, so long as the deed itself is saved from prescription by interruptions.

*Fol. Dic. v. 4. p. 92. D. Falconer.*

\*\*\* This case is No 16. p. 6560. See Kilkerran's report of it, *infra, h. t.*

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## S E C T. VI.

Cess.—Discharges.—Annual prestations.—Exceptions.—Intrinsic objections.

1710. July 30.

THE MAGISTRATES and TOWN-COUNCIL of PAISLEY *against* Their VASSALS.

No 43.  
Forty years  
use of pay-  
ment by Ma-

THE burgh of Paisley, and the lands within its territory, being valued in the cess-books of the shire of Renfrew, to L. 1077 : 6 : 8d; and the Magistrates