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there could not be a positive prescription of a right of property; for such a right does not fall by the negative prescription. The positive prescription puts an end to every claim. Why? Not that a claim of property is lost *non utendo*; but that the statutory title is a good evidence of property against all the world. And if the possessor be proprietor, no other can be. I purchase an estate affected by an adjudication. The adjudger is first infeft; and he obtains a declarator of expiry of the legal. Yet his claim is not good against my statutory title; though his claim of property is not lost by the negative prescription, because it could not begin to run till the legal was expired.

Beside the arguments in law, several considerations dispose me strongly against the interlocutor; the unsettling of property by multiplying law-suits about it; the obstructing the commerce of land, by rendering purchases less secure; and the rendering our records less perfect, by sustaining objections to a title of property which cannot be discovered in the record.

Sel. Dec. No 60. p. 94.

1756. June 24.

CHILDREN of Sir SAMUEL M'CLELLAN *against* The REPRESENTATIVES of Captain MENZIES of Enoch.

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A bond being conveyed to trustees for the use of children, and not pursued for during 43 years, was found to be prescribed, notwithstanding the minority of the children.

IN the year 1708, James Menzies of Enoch granted bond for L. 500 Sterling to Sir Samuel M'Clellan, payable at the next term.

In the year 1709, Sir Samuel assigned the above bond to certain trustees, for the use and behoof of his children, according to such divisions and proportions as the said trustees should think fit; which trustees he, in the same deed, appointed to be tutors and curators to his children, and declared them not to be liable for omissions.

Soon after he died, leaving his children under age; some of the trustees tutors entered upon their office, but neglected the affairs of the children; so that nothing was done upon the bond for 43 years and a half, nor did the trustees make any division among the children.

After these 43 and a half years, the children brought a process against the Representatives of James Menzies for payment of the bond. The defence was prescription; and the answer was, that the pursuers were minors more than ten of the 43 years and a half.

Pleaded for the defender; The right to the bond was vested in the trustees; they alone had the *jus exigendi*; in such a case, those for whose behoof a trust is taken, are no more than creditors to the trustees to the extent of their debt. Prescription runs against the trustees, and the minority of the children cannot interrupt it.

2do, The children had no title to plead their interest as minors, as long as the division was not made by the trustees, and the trustees were alive; seeing that, till the division was made, the children could never be certain of having a share or interest in the subject.

Pleaded for the children; Whatever may be the effect of a deed granted to trustees *ex facie* absolute, and qualified only by a separate back-bond, the present deed merits a different consideration, which *in gremio* bears to be granted for behoof of the children, in which the trustees are appointed tutors for them, and were declared liable only for their omissions, and which therefore must be looked upon only as a more extensive factory for the care of the children's affairs; in such a case, the prescription must be regulated by the state and action of the children, and not by the action of the trustees tutors.

"THE LORDS found that no action lay upon the bond in question after the lapse of 43 years and a half from the time of payment thereof."

Act. A. Pringle, M^cQueen. Alt. Miller. Clerk, Kirkpatrick.

J. D.

Fol. Dic. v. 4. p. 111. Fac. Col. No 207. p. 304.

1757. December 1.

WILLIAM GORDON, Writer to the Signet, against Major ARTHUR MAITLAND.

SIR CHARLES MAITLAND of Pittrichie, in the year 1700, executed an entail of his estate by procuratory, 'in favour of himself in liferent, and Charles his only son in fee, and the heirs-male of his body; which failing, to the other heirs-male of his own body; which failing, to the heirs-female of his son Charles's body, and the heirs-male of their bodies, the eldest daughter or heir-female always succeeding without division; which failing, to Jean Maitland, his own eldest daughter, and the heirs-male of her body; which failing, to his other four daughters *seriatim*, and the heirs-male of their respective bodies.'

This deed contained no limitation upon Charles the fiar, or the heirs-male; but the daughters and heirs-female were restricted from selling or alienating the estate, or affecting it with debt above 20,000 merks Scots.

Sir Charles Maitland was succeeded by his son Sir Charles the younger, who died in the beginning of the year 1704, without issue, whereby the succession opened to his eldest sister Jean, who made up titles to the estate of Pittrichie, by service to her brother and infestment, and soon after intermarried with Baron Maitland, of which marriage there was issue one son, Charles, and four daughters.

Sir Charles the younger, during his possession, as he was under no limitation by the tailzie, had contracted large debts, the principal sums amounting to L. 19,640 Scots, all due by moveable bonds. These debts were, by degrees,

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Debts acquired by a husband affecting his wife's estate, do not prescribe during the marriage.

Prescription does not run during the minority of the person for whose behoof a right is acquired in trust.

Several other points were decided in this cause, which are referred to under their respective titles.