

1779.

(M. 10702.)

<p>DAME ROBINA POLLOCK OF CRAWFORD, MARY LOCKHART, relict of JOHN LOCKHART of Lee, - - - - -</p>	}	<p><i>Appellant.</i> <i>Respondent.</i></p>
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SHORT
v.
SHORT.

House of Lords, 10th March 1779.

PRESCRIPTION—FOREIGN SUCCESSION.

For full report of this case, see (M. 10702.)

Where an English trust was created of estate in England, vested in English trustees in the English form; but for the benefit of parties natives of Scotland; and the trust fund having not been put to the uses mentioned; but transferred by the trustee to the first party beneficially called to succeed. Forty years after the present action was raised by the Scotch party, deprived of the benefit. Held, in the Court of Session, that the Scotch law of negative prescription, and not the English law, fell to be applied, and that the right of the parties favoured by the trust was cut off by the negative prescription.

Affirmed in the House of Lords.

For Appellant, *Al. Wedderburn, John Maddock.*

For Respondent, *Ar. Macdonald, J. Dunning.*

[M. 5615.]

<p>THOMAS SHORT, Optician in Edinburgh, JOHN SHORT, - - - - -</p>	}	<p><i>Appellant;</i> <i>Respondent.</i></p>
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House of Lords, 19th March 1779.

CONQUEST.

For full report of this case, *vide* Morison, p. 5615.

A brother disposed heritable bonds to his immediate elder brother, his heirs and assignees. Both brothers died without issue. The eldest son of a brother elder than either, claimed it as conquest. Held, in the Court of Session, that he was to be preferred as heir of conquest to their younger brother, who claimed as heir of line.

1779. On appeal to the House of Lords the appeal was dismissed, it appearing to the House that all the persons interested were not made parties to the said appeal.

THREIPLAND
v.
WALSH, &c.

For Appellants, *David Græme, Dav. Rae, J. Anstruther.*
For Respondents, *Al. Wedderburn, John Munro.*

[M. 8383.*]

Dr. STUART THREIPLAND, Physician, Edinburgh, *Appellant*;
JOHN WALSH and Others, Creditors of the } *Respondents.*
York Buildings Company, - - -

House of Lords, 15th April 1779.

BANKRUPTCY—POWER OF GRANTING LEASE.—A company after adjudications had been led against their estates, and ranking and sale was raised, but superseded, and a petition to sequester, presented to the Court, granted a lease of one of their estates for 99 years. Possession followed for 30 years, the company receiving rent from the tenant in the knowledge of the company creditors. In a reduction to set aside the lease by the creditors, on the head of bankruptcy, held, reversing the judgment in the Court of Session, that the lease was not reducible.

The York Buildings Company became proprietors, by purchase, of all the forfeited estates in Scotland, amongst which was the estate of Fingask.

A lease of the estate of Fingask and Kinnaird was granted
Mar. 22, 1745. by the company, of this date, to Mr. Drummond, his heirs and assignees, for the space of 99 years, to commence at Whitsunday 1745, at a yearly rent of £480. 6s. 4d. Upon
May 18, 1752. this lease possession followed, and the lease was thereafter assigned to the appellant, Dr. Threipland, for payment of the same rent, upon which assignation followed, and was continued up till September 1777, when the present action of reduction was brought to set it aside, by the creditors of the York Buildings Company, under the following circumstances:—

For some years prior to the lease, the York Buildings Company had been in difficulties. They had borrowed large sums to carry on their undertakings, many of which failed

* This case and the one following are imperfectly reported in Morison.