

evidence, *v. g.* of an anterior right ; for a purchaser's right acknowledging another's, cannot be free of the burden thereof by the positive prescription ; as a vassal cannot prescribe against his superior, except as to bygone duties preceding 40 years ; because the vassal's right acknowledgeth the superior's, and he possesseth both for himself and for the superior ; *2do*, Neither can the negative prescription take effect in the present case ; for the clause in the act 1617, whereby it is ordained, that all actions upon whatsoever ground, shall prescribe, except incorporated or registered reversions, hath by law and decisions been qualified with other limitations and exceptions ; so *contra non valentem agere non currit prescriptio* ; upon which account, bonds prescribe not from the date, but from the term of payment ; and inhibitions prescribe not from their date, but from the date of the disposition in prejudice thereof. THE LORDS have also found, That one was not obliged, for interrupting prescription, to raise a declarator of his right, while it stood affected with a liferent that would have excluded his process ; *3tio*, Obligations for annual prestations, as *jus annui redditus*, or a liferent right, not being considered as one, but as many obligations *quæ renascuntur* yearly, do not prescribe from the date of the first obligation, but every year runs a course of prescription from the time it fell due, L. 7. § 6. C. De Prescript. 30. & 40. Ann.

THE LORDS found, That there being no action intended for payment of Jean Gordon's liferent for 40 years after Duncan Cuming her husband's decease, her right, and the pursuer's claim thereupon, is prescribed.

*Fol. Dic. v. 2. p. 98. Forbes. p. 519.*

1728. December 24.

PRESBYTERY of PERTH against The MAGISTRATES of PERTH.

In a declarator of the property of lands, the defenders, who had been above 40 years in possession, without offering to produce any title, objected to the pursuers the negative prescription. The *answer* was, That where a complete right of property is once established, such right must for ever remain, unless where transmitted by conveyances legal or conventional, or unless where acquired by a third party, in virtue of the act 1617, by the positive prescription, which holds *a fortiori* in this case, the defenders having produced no sort of title. THE LORDS repelled the allegiance of negative prescription, in respect of the answers, that the defenders had produced no title. See APPENDIX.