

advise in the Interim, whether they will find their account in serving
 heirs. Seisin upon Resignation in Burgage Land, with 40 Years Con-
 tinued possession on Seisins by haff and Staple, is now sustained as a suf-
 ficient title of prescription 25 Decemb. 1705 Ker contra. Abernethy.
 Seisin by haff and Staple requires neither Return nor precept of Clare-
 constal to warrant the granting of it: Because they are not given ac-
 cordingly by any person as Bailie in that part, nor Extended by a Common
 Rollary; but the Bailie of the Burgh as Superior with the same haff and
 Receives Resignation and gives Infeftment or grants Seisin by haff and
 Staple (which is the Burgher Colour) upon production or certain know-
 ledge of the Parties rights, or of their propinquity of blood to the said
 Infeft. Such right of a singular Successor or heir by prescription
 cannot be Sustained upon any ground, except false deed delivred.
 22 J. 6. offer falshood never prescribed, that is, when a paper is pro-
 duced and offered to be Improved as false or forged, no Cause of time
 can Exclude this Improbation. But Sir George Mackenzie Comment
 or Act 12 Infeft. seems to think, that when writes are taken as
 in a general Improbation, in order only to try the Defendants right
 with Certification that if they be not produced, they shall be taken
 as false and feigned fictions. Juris, Prescription should be Sustained
 against this Presumptive false hood.

No person is obliged after 40 Years, to produce procuratories
 or Instruments of Resignation, precepts of Clare Constal, or other
 precepts of Seisins; nor is the want thereof any Cause of the nullity
 of the Infeftment, where the Charters mentioning Resignation to
 have been made, and the Instruments of Seisin Expressing the precept
 by virtue whereof Seisins were given are Extant act 24 Par.
 14 J. 6. The Reason is, because Procuratories of Resignation, precept
 of Clare constal and other precepts of Seisins, are often lost: partly
 by the Injury of time, partly, by the penning of Prothocals and
 of No Rollary; partly, thro the parties and disposers not Delivering the
 same; partly, for that the Evidents of appriized Lands use property
 to be abstracted to Elude the Diligence of Creditors; part, because
 it is not thought necessary to keep such Writs after a long time.
 Since the Charters mention the procuratories and Instruments of Resignation
 and Instruments of Seisin narrate the precepts of Seisins
 whereupon they proceed. Nor is it necessary after so long time
 to produce such procuratories or Instruments or precepts, the
 possession hath neither been peaceable nor continued. *Stair lib. 2.*

12 519 As the Act of Prescription Requires. For the like Reason the
 of Seisin do not easily grant Certification against appriizers. They Refuse
 Certification against the grounds and warrants of appriizing, as the
 Letters or Executions tho they cannot be produced after 20 or 30 Years
 11 Feb. 1681 Kennaway contra Crawford. Mackenzie observ. on act 149
 Par. 14 J. 6. Mackenzie necessary to sustain Debt appriized in 40
 Years 11 Feb. 1681 Kennaway contra Crawford. Year 1 Quarter upon
 an old appriizing proceeding on a warrant of appriize, was found sub-
 sistent to Exclude Certification against the said warrant in appri-
 zing 29 July 1680. L. Stovren contra. W. Aholo.

By positive prescription of 40 Years, not only Land and Inmue-
 vents are acquired but also the right of the same. Mackenzie lib.
 that 40 Years possession confers an absolute right, with Exclusion
 action upon personal hereditaries, or realties concerning payment of
 the money, or Executions and claims for retaining the said realties
 and d. act 12 Infeft. seems to think, that when writes are taken as
 by Virtue of such a title, can confer some prescription against the
 transfer or grant of the realties, to make an absolute right of
 property without leave being taken of the true owner, and
 retro vendendo. However a general title, certainly a year, month or two
 possession, against such as have no title to the same, or several
 Abstract the transfer. Thus an Improper writ with 40 Years
 possession, was sustained as an absolute right of property, in a
 petition also did not sustain the transfer, or destroy any right
 from him: Albeit the Reverend right stood however by a certifi-
 cation in a Reduction and Improbation at the Comptrolers In-
 stance 19 June 1713 Murray of Burgaltoun contra. W. Colban of
 Barcelona. Because the Breve Return to those parties Libellitibus
 Accipientes, has no effect against the Long Prescription, which
 supports him who pleads it to derive his right a Non Domino;
 seeing otherwise he should find no prescription to support it. He may
 also acquire by such Prescription, heritable offices, patronages, or
 constituted personage 7 Feb. 1666 E. Punmure contra Parishioners
 of *Stair lib. 2.* 521. 25 and Vicarage lites both as to Quantity
 and Quality 29 Novemb. 1678. Birnie contra E. *Stair lib. 2.* 30
 June 1668 Minister of Elgin contra Parishioners. 40 Years posses-
 sion of 9 fishes out of every Boat paid by tenants under the name
 of 10 fish by Virtue of Infeftments with a General Clause cum
 Discretionibus, was sustained Relevant to prescribe a right to the same
 al.