then be Charged with Negligence or Omission to do it. For the same Rea:son the Prescription of Actions for debts or other things which are due upon some Condition, and which cannot be Demanded till after the Con:dition happen begins to run only from the day on which the Condition was accomplished, from which time the Creditor began only to have a right to Demand the thing. Actions of Warrandice prescribe from the time of Distress, and not from the date of the bond or Infeftment whereupon the Warrandice is sought act 12 Par. 22 J. 6. One of the Cautioners in a bond having paid the debt upon distress, and got a discharge thereof, Action of Relief Competent to the distressed Cautioner against the Co-cau:tioner was found to Prescribe not from the time of the distress, but from the time that the debt was paid 12 feb. 1712 Lady Grantshaw contra D. Buccleugh. A wifes provision in her Contract of Marriage prescribes from the husbands death: Albeit the Correlate obligation for the tocher in favour of the husband prescribes from the date 5 July 1665 [illegible] contra Stewart. For albeit the wife cannot sue during the Marriage for her Jointure, the husband may sue for the tocher. Thus a Man's not Insisting for 40 Years upon a bond payable to him and his wife and the longest liver of them two (whereby it was prescribed as to his In:terest in the Stock) was found not to Exclude the wifes Jus Exigendi or right to uplift the money for her liferent use: As to which pre:scription could begin to Run only from the death of her husband. Albeit (as Dirleton observes) some of the Lords were of opinion, that the Maxim contra non Valentem agere &c. should be understood only in the case of temporary and Momentary prescriptions, and not of prescriptions Longissimi temporis; for that otherwise a person acquiring a right of lands possessed by his Author peaceably for the space of 40 Years would be Insecure, and tho the husband had been Silent 40 Years, his wife who pretends right to the lands by liferent non valebat agere during the Marriage: Or that the Maxim is to be understood in the case where there is not a person Valens agere by the Space of 40 Years whereas here the husband during all his time being valens agere, and after his decease the wife, and the silence of the husband who was fiar and had right for the time, being Joined with the Relicts silence for the Space of 40 Years betwixt them, all the Reason of Prescrip:tion Concurred 22 June 1675 [illegible] contra E. Weems. But a wifes In:feftment flowing from her husband with 40 Years possession by her and her was not sustained to Complete Prescription, unless she had possessed 40 Years after the husband's death; seeing the con[illegible] not Instruct his possession and the Warrand of it 21 January 1679 Frazer contra Hog. Prescription runs not against [illegible]

a fiar whose right is burdened with a Reserved liferent, during the liferen:ters possession 8 feb. 1680 Brown contra Hepburn 28 feb. 1666 E. Lauderdale contra V. Oxford 17 January 1672 Young contra Thomson 25 January 1678 D. Lauderdale contra E. Tweddale. Because during that time non valebat agere by pursuing Mails and duties, Albeit he might have pursued a Declarator or Reduction. Prescription upon Inhibition runs from the date of the quarrellable Right, that is, the date of Re:gistration of the Instrument of Seisin following on the right granted contrary to the Inhibition; and not from the date of the Inhibition, that is, the date of Registration of the Letters and Execution of Inhibition 22 June 1681 [illegible] contra [illegible] 22 Novemb. 1682 Moultray contra Porteous. Because Inhibition [illegible] posterior deeds of the person Inhibited, the Inhibiter non valebat agere till such deeds were done.

When prescription is alledged against [illegible] will not be [illegible] for the pursuer to [illegible] by the [illegible] oath, [illegible] to her [illegible] the [illegible] [illegible] action on such a [illegible] [illegible] prescribes [illegible] action on [illegible] promise to pay, tho Referred to the Defenders oath, [illegible] Stewart An:swers to Dirlet. [illegible] prescription.

Tit. 2.

Prescription of 20 Years.

A man may serve heir to his father, grand father or other predecessor after a hundred or never so many years So long as no other person is served because Jura Sanguinis Nullo jure Civili dirimi possunt L. [illegible] Reg. jur. But a wrong service cannot be Reduced or quarrelled after 20 Years act 13 Par. 22 J. 6. This prescription [illegible] Sir George M^c^Kenzie (observe on d. act 13) is effectual only in the Competition of Several kinds of heirs as heirs of line Male tailzie and provision, and doth not Ex:clude a Clear Interest of blood, where a Nearer heir of the same Line doth afterward appear. For Vouching which opinion, he cites a Decision (11 January 1673 Lamb contra Anderson) where the Retour of a Second Brother served heir to his father when the Elder brother was absent and Reputed dead, was found Null by Exception at the Instance of an apprizer from the elder Brother as Charged to enter heir to his father: Albeit the Elder brother died Unretoured without quarrelling the Second brother's service within 20 Years. But that pratick comes not