

Tit. 6. Prescription of 4 Years.

The privilege competent to Minors of Reducing Deeds done by them upon Minority and Lession, prescribes 4 Years after their age of 21 Years complete.

Tit. 7. Prescription of 3 Years.

Afsizers Serving and Retaining a wrong person heir, cannot be quarrelled for error in order to punishment after 3 Years. But this prescription runs not against minors, or persons out of Scotland act 37 Par. 3 F. 4 junct. act 13 Par. 22 F. 6 In imitation of the Roman Law, which requires a longer time for prescribing a right to Immoveables against persons absent, than against such as are present.

Actions of Spuilzie, ejection, and others of that Nature, but such Actions, arise from Violence, are conclude. Extraordinary Damages, as an action of Intrusion, an action for demolishing a Wall, or for Damages sustained thro' riving out a common Moor &c. are not pursued within 3 Years after committing the deed, prescribe, except against Minors act 31 Par. 6 act 19 Par. 7 F. 6 as to the privilege of a short Pleading, violent parties, and leaving the Damages by the Injured parties oath in litem for simple Restitution and ordinary profits. may be pursued according to the common course of Law at any time within 40 Years Stat. lib. 2 fol. 12 § 30 Mc Kenzie ibid. Actions for Wrongous Imprisonment prescribe, if not pursued within 3 Years after the last day of the wrong Imprisonment, and the raised within that time prescribe, if not pursued in Yearly thereafter act 6 Feb. 9 Par. 2. K. 11.

Actions of Removing prescribe against all, whether Minors or majors, if not pursued within 3 Years after the Warning act 32 Par. 6 F. 6 that is, after the time to which the Warning to Remove was made 6 Feb. 1629 Lad Ross thence contra Scot. Stat. ibid. and not from the Date of the warning which is uncertain.

Actions of Debt for house Rents, ordinary Servants fees, Merchants accounts (under which other accounts are Comprehended) and the like Debts not founded in writs prescribe against all persons whether Minors or Majors 26 January 1709. Brown contra Brodie Stat. ibid. as to the Manner of proof by witnesses, if not pursued within 3 Years after they fall due; which being Elapsed such claims can be proved only by writ or oath of party act 33 Par. 6 F. 6 Because Law presumes that men will not suffer such Debts to be over unpaid longer than 3 Years without taking a written obligation for them. Therefore in

in a process for any of these debts commenced after the 3 Years, the pursuer must libel and prove that it is still resting unpaid. And if he refers the same to the Defendants oath, and he deposes that he was resting such a Debt he is paid, the Defender will be satisfied 6 July 1711 Clerk contra Dalrymple, Mc Kenzie contra. act 33 Par. 6 F. 6. Because, the such an oath doth not prove payment, it moves not Resting owing, which is incumbent upon the pursuer. But this quality of payment must be relative to the Debt, & not contingently for the objection of it or interdicts would not be granted, Mc Kenzie ibid. The Reason why these prescriptions of Actions of Removing, Actions of Debt for house Rents, ordinary Servants fees Merchants accounts and the like debts not founded on writ, run against Minors, who are Actions of Spuilzie Ejection and the like acts of Violence & not run against minors: may be perhaps, because the time is not prescribed by the former, it is less than by the latter. A point not arrived do not libel ordinary Servants fees, fall under this prescription 14 July 1709 Graham contra G. Leven & Coll. Because the Lieutenant General or Colonel can be pursued for these till he receive them from the Government, which is some times more than 3 Years, according to the Government thinks fit to delay the same. That Prescription of Merchants accounts extends to accounts of Travellers 16 Decemb. 1709 Somers contra Executors of Blairhead. 29 Novemb. 1709 Mason contra G. Aberdeen. Which prescribes as to the Manner of proof that they are their clients papers in their hands from Hypothecation Enamelled into & from. For the Hypothecation being only an act of private civility, it is not plead from the sole authority of their Employers or notes, unless they make appear, that debts are resting. The exception or defence, that a writer cannot be obliged to deliver up said clients papers till his account be paid, was found not to preclude as to the Manner of proof, while the papers are in his custody 15 January 1711 Mc Kenzie contra Mc Adam because an Exception is not precluded by writ, unless do they prescribe as to the Manner of proof. But ground of Exception are not found to prescribe vid. supra pag. 1354. This prescription reacheth in like Manner the accounts of Grocers 13 Novemb. 1677 Wilson contra Ferguson and the accounts of Apothecaries and Grocers men there being the same Reason for all. But it extends not to accounts conform to Bargains entered into by writ; in which case a party may prove performance by witnesses after 3 Years 21 Feb. 1711 Wilson contra Lord Preston hall 5 July 1651 Dickson contra Mc Huley. A Shipper's Disbursements and accounts do not fall under this prescription quoad Modum probandi, Reasoning after he was Expulsi-ale and out of office because Shippers are persons In trusted, and have the privilege of proving their Disbursements by their own oaths 28 Novemb. 1657 Algar contra Charters. Prescription of