mill and grind their corns thereat, rather than at any other mill, in respect of the natural bond betwixt vassal and superior, and master and tenant; but that they should grind all their corns, and such as they have not use nor necessity to grind, it is in itself most unjust and tends to oppression, and ought not to be mentioned; likeas, in this instance of the case controverted, he alleged that the words of the writ of astriction proport no otherwise, and also according thereto the defender and his authors, these 40 years bypast, without question, have been in use to use and dispone upon the corns growing upon the said lands alleged astricted at their pleasure and where they pleased, except such as they had necessity to grind, and no more; during the which whole space they were never questioned nor convened for any of the said abstracted corns, and so the pursuer and his predecessors have acquiesced with the said thirlage so retrenched to the corns ground, and now cannot be heard to desire the astriction to be any further extended than as has been possessed these forty years bypast, as said is; this allegeance was repelled *ut supra*, and found, that albeit the defenders nor their predecessors were not troubled never so long of before for their corns abstracted, and that never any question nor pursuit was moved against them thereanent during all that space; yet seeing the defenders have ground a part of the corns growing on the lands thirled, it was sufficient to sustain the astriction; and the desuetude to pay the multure for the whole corns growing these 40 years bypast, and the not pursuing therefor, did noways prejudge the thirlage; but found, that notwithstanding thereof, they remained astricted in the whole corns growing, as effectually as if *omnia grana crescentia* had been astricted, with deduction of such particulars as the Lords should find in law and reason ought not to be defalked, when the particulars should be proponed. No 408.

Act. *Advocatus & Nicolson.* Alt. *Stuart.* Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 129. *Durie, p.* 768.

*** A similar decision was pronounced, 25th July 1727, M'Leod against Feuars of Muiravonside. See APPENDIX.

1665. *February* 17. BUTTER *against* The LAIRD of BALLEGERNO.

IN an action Butter and Gray of Ballegerno, the LORDS found, that a summons raised upon a bond and executed, though the day of compearance was after 40 years, the summons and execution being before the expiring of 40 years, is sufficient to interrupt the prescription. No 409.

Fol. Dic. v. 2. *p.* 127. *Gilmour, No* 141. *p.* 102.

*** Newbyth reports this case:

No 409. 1665. *February* 15.—In an action of registration of a bond, pursued at the instance of James Butter against James Gray of Ballegerno, &c. there being a defence proponed, viz. No registration, because the bond was prescribed, not being pursued within 40 years; to which it was *answered*, That there was a summons raised and executed upon six days within the 40 years: The Lords found the same sufficient to interrupt, albeit the action was not called till after the 40 years were expired.

Newbyth, MS. p. 26.

*** Stair's report of this case is No 363. p. 11183.

1665. *July* 5. Adam Ainslie *against* George Gladstanes.

No 410. Found in conformity to Butter against Gray, *supra*.

Adam Ainslie pursues a summons of registration against George Gladstanes, as representing his father, Walter Gladstanes, for payment of a debt. This summons being raised *in anno* 1650, and executed by a Sheriff in that part, and wakened *in anno* 1664, and then called; it was *alleged*, No process because the debt was prescribed, nothing being done thereupon by the space of 40 years. It was *replied*, That the pursuer had raised his summons *in anno* 1650, and executed the same; and albeit they were not called till 1669, yet the first summons being within the 40 years, albeit not called since they were executed, was sufficient to interrupt the prescription. The Lords found the prescription sufficiently interrupted by the first summons, and execution of a Sheriff in that part, the same being truly executed.

Fol. Dic. v. 2. *p.* 127. *Newbyth, MS. p.* 32.

1666. *June* 15. Sinclair *against* Ld. Houston.

No 411.

A decree of poinding the ground against tenants though informal, the proprietor not being called, was found sufficient to stop the negative prescription of the annualrent.

Fol. Dic. v. 2. *p.* 128. *Stair.*

*** This case is No 15. p. 1289., *voce* Base Infeftment.