

1680. *February 13.* ———— *against* The MASTER of SALTON.

THE Master of Salton being pursued by his servant, the Lords would not modify any fee to him, unless he will offer to prove the paction to serve for a fee; since he might undertake to serve only for his meat. Yet it may justly be presumed he served for a fee; *nam non præsumitur quis operas suas temere jactare velle.*
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1680. *February 13.* EDWARD GILLESPIE *against* HOME of ECCLES.

IN Edward Gillespie's case against Home of Eccles; where one pursues for maills and duties, and, *pendente lite*, accepts of his bygone annualrents, he cannot insist and crave a decret against the tenants in time coming, unless there be at least a term's annualrent owing; for it is not known if that tenant shall remain there as tenant, when the same shall become due, yea or not.

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ANENT ADJUDICATIONS.

ADJUDICATIONS on the Act of Parliament 1672, are summarily called and decerned without enrolling; but adjudications upon renunciations to be heir, and special adjudications *ad factum præstandum*, as to fulfil a disposition, must be enrolled *in communi forma*; unless the pursuer instruct that he is running for diligence, and that there are adjudications past against that same person before him. See *December 1675*, [page 54, *Nasmith.*]
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1680. *February 13.* ALEXANDER LESSILS *against* JAMES RANKIN.

BETWIXT Alexander Lessils, master, and James Rankin, apprentice; the Lords found, that the Dean of Guild of Edinburgh, upon a reference and submission made to him, could not appoint the indentures to be torn; and that it was not a sufficient ground for a master to thrust his apprentice out of his service, that he, after many admonitions, still lay long in his bed, and refused to carry his master's bible to the church, or was once drunk; but only allowed him moderately to chastise him for these or the like faults: but found it a relevant cause to put him from his service, that he offered to prove the boy was hypochondriac, and sometimes furious, and thereby incapable and unserviceable. See *21st February 1671.*
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1680. *February 19.* ———— *against* MACKLELLAN.

IN an action against Macklellan, beadle of the chapel-royal, the Lords made

the printed Act of Sederunt anent renunciations of infestments after the renouncer was inhibited. *Vol. I. Page 86.*

1680. *February 19.* ANENT the LONG PRESCRIPTION.

It was debated, though bonds prescribe after forty years, if not pursued for, yet what if one be out of the country near forty years, and, after the forty years, he pursue for the debt, and do not make use of the bond which is prescribed, but refer the forty years old debt to his oath; will he be obliged to pay, if he compare, and swear that he was once indeed owing that debt, but that it is past forty years since it was lent; will the grand prescription assoilyie him? I think it will. *Vol. I. Page 86.*

1680. *February 20.* PHILIP NISBET *against* STEPHEN BRUNTSFIELD.

In this action, the Lords found, on report, that the subscribed account produced is not sufficient to infer a debt against the defender, unless the pursuer will instruct, either by the defender's oath, or by witnesses, that the salmon contained in the subscribed account was meddled with by the defender's father after the date of the discharge, *in anno* 1665, of the copartnery betwixt them, produced in process; and repel the exception of the nullity proponed against the account, as wanting writer's name and witnesses, in respect of the answers made thereto, *viz.* that, there being four parties subscribers, they are witnesses one to another; and, *2do*, that it is *in re mercatoria*. See the contrary, Dury, 14th Feb. 1663, Rankine.

So the discharge 1665 cuts off the counting for any salmon preceding its date; but they allow the pursuer to prove thir salmon in the account 1669 were furnished after the said discharge. *Vol. I. Page 86.*

1680. *February 20.* BOTHWEL of GLENCORSE, and the CHILDREN of SIR ROBERT PRESTON, *against* JOHN LUTFOOT, W. S.

In an action betwixt Bothwel of Glencorse, and the Children of Sir Robert Preston, against John Lutfoot, Writer to the Signet, the Lords found, that the forty years' prescription began to run against an inhibition from the date of the last execution, and not from the date of the registration thereof, as was alleged it ought only to be counted: *ut sic valeret actus*; and prescription, which is odious, might be evited. *Vide* a remark anent Registration of Writs, [page 293.] *Vol. I. Page 86.*

1680. *February 20.* MARION AITKEN *against* WILLIAM HAMILTON.

In an advocacy raised by Marion Aitken against William Hamilton, the