

the printed Act of Sederunt anent renunciations of infeftments 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.*

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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.*

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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.*

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

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

Lords remitted it back to the bailies, because there was *litiscontestatio* in the cause, though they had raised a blank reduction of that Act; and the Lords found no iniquity in sustaining process against her, notwithstanding of her absolvitor, and her exception of *res hactenus judicata*, because she was now convened by him *super alio medio*. Yet *Petrus de Ferrariis*, and the doctors, think a man by pursuing, *omne suum jus in libellum deducit*, and an absolvitor should terminate all. See 10th Jan. 1627, Thornton. Vol. I. Page 86.

ANENT turning DECREETS into LIBELS.

THERE is a great difference betwixt turning a decret into a libel, and debating the cause as if they were in a libel; for, in the first case, the denunciation, and all the diligence used thereon, falls; in the second it stands, if the letters shall be found orderly proceeded. *2do*, If a decret be turned into a libel, then the cautioner in the suspension is free; but not so in the other case.

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1680.

LORD CARDROSS *against* JOHN MAITLAND.

January 21.—JOHN Maitland, second son to my Lord Halton, having married my Lord Kilmawers' daughter, and Stewart of Kirkhill's grandchild, obtains from the King the gift of Lord Cardross (who had married Kirkhill's other daughter,) his liferent escheat, upon a horning, whereof Cardross had paid the debt, but neglected to relax, or to take a gift. The narrative of the gift proceeds upon four or five grounds of equity, *viz.* the great services done by the donatar's father, and his uncle the Duke of Lauderdale, and their predecessors, and other good offices done by them to the Crown. *Item*, For the worthy memory of Chancellor Glencairn, her grandfather. *Item*, Because, contrary to law, the equal half of Kirkhill's estate, by tailies and back-bonds and other such fraudulent means, hath been conveyed away from the Lady Kilmawers and her daughter, (to whom the half of the succession, by the law of God and nature, belonged,) and are enhanced by my Lady Cardross and her Lord. *Vide infra*, 24th February 1680. Vol. I. Page 76.

February 24.—The Lord Cardross having raised an improbation of the charge and execution of horning, whereon his escheat is gifted to John Maitland, (*vide* 21st Jan. 1680,) he gave in a bill, craving a commission for examining the witnesses in the messenger's execution, to lie *in retentis*, least they should die before June.

The Lords refused it, because it did not appear that they were old or valetudinary. *Vide* 4th June 1680. Vol. I. Page 87.

1677, 1679, and 1680. JAMES HAMILTON of MANNER ELEISTON *against* JOHN ELIES of ELIESTON.

1677. February 8.—THIS day, James Hamilton of Manner Eleiston gave in a complaint to the Secret Council against Mr John Eleis, elder of Eleiston, ad-