No 9.

ments, or out of one divided thereafter, taking effect by payment or interruption against any one, preserves the annualrent as to all. It was *answered*, That albeit prescription is excluded by possession or interruption, *quoad* all rights principal or accessory, yet it is not so as to legal acts, whereby no right is acquired, but only a stop put to opposite rights, such as inhibition, or arrestment, or process of reduction, or declarator; for though the user of these legal diligences should possess by his right, which doth much more exclude prescription than any process or citation, it cannot be pretended that these legal diligences would not prescribe by possession by the principal right; but it is clear that arrestments would prescribe by the late act of Parliament, not being proceeded on in five years, albeit the ground of the arrestment were not prescribed, yea albeit the creditor should pursue for payment upon the ground of the arrestment within these five years, which must much more hold in inhibitions; for that which properly prescribes, is not the inhibition but the action thereon; and there being here no action upon this inhibition for 40 years, neither possession nor action upon the ground thereof, though it had been directly upon the bonds, will preserve the inhibition from prescribing.

THE LORDS found that there being no action upon the inhibition for 40 years after the date thereof, and after the right reducible thereby, that a reduction upon the ground thereof, not relating the inhibition, did not interrupt the prescription of the inhibition or action thereupon; albeit it was alleged that the inhibition was given out with this reduction within the 40 years, which the Lords regarded not, seeing nothing was mentioned in the reduction of the inhibition till the 40 years were past; for they thought it was of great inconvenience to the security of land-rights, for which registers are only inspected for 40 years past, to find out inhibitions, which would not be secure, if possessing or pursuing upon the ground of the inhibition might perpetuate the same. *See* PRESCRIPTION.—INHIBITION.

Fol. Dic. v. 1. *p.* 354. *Stair, v.* 2. *p.* 858 & 880.

1706. *June* 20. STRACHAN *against* CREDITORS of EDZELL.

No 10.
Certification in a reduction and improbation cannot pass against warrants after 20 years, unless it be proved by the defender's oath, that they are still extant, and kept up by him.

STRACHAN, an adjudger of Lindsay of Edzell's estate, for himself, and assignee by other creditors, for near an hundred thousand pounds Scots, pursues a reduction and improbation against the whole other creditors; and the terms being run, and sundry partial productions being made, he craved certification *contra non producta*, and the principals of such bonds, whereof only extracts were produced. *Alleged*, This process being against a great multitude of creditors, defenders, and pursued only to force production, in order to a ranking and sale, it would be an intolerable hardship and vast expence to go and take out all the grounds and warrants of their adjudications, and other diligences from the respective clerks, up and down the kingdom *per omnes regni angulos*,

and produce them here; and the extracts were sufficient to carry on the roup; and by the same rules he ought to produce principals of all the adjudications, their grounds and warrants, whereunto he has-right, which he has not done, seeing, *quod quisque juris in alium statuerit, eodem et ipse uti debet. Answered*, He craved nothing but what was common law and practice; and the defenders being more or fewer did not alter the case, being but *majus et minus*; and he had reason to believe if the principals were produced, sundry vitiations and nullities would appear *ex facie scripturæ*, which cannot be known by extracts; and he has libelled a reason of falsehood against them all; and if there be marginal notes on the principals unsubscribed, or wanting witnesses, at least, not bearing they were adhibited to the addition of these margins, how can this be discovered by extracts? *Nullo modo;* and for his own production, when they are as far advanced as he, and have raised an improbation against him, he shall never decline to produce the principals; but *in hoc statu processus*, he has produced enough of title *ad fundandum litem*, and to force them. THE LORDS saw inconveniences on both sides, but considered what had been the constant form observed; that, 1*mo*, as to old warrants past 20 years, as in letters and executions of apprising, no man was obliged to produce these, unless it was offered to be proved by their oath, that they were not kept up by them, and had them. 2*do*, They made great distinction betwixt the grounds and warrants of decreets, the grounds being the bonds, contracts, dispositions, assignations, confirmed testaments, retour, and other titles of the pursuit; and these being generally got back by the parties, they ought to be produced; the warrants are the libels, executions, minutes of process, interlocutors, &c. which lie in the clerk's office, as the warrant of the decreet, and such after a certain space of years cannot be called for. 3*tio*, If they are writs registrate in the books of Session, a condescendence on the dates of their registration is sufficient to burden the pursuer with searching them; but it is otherwise in writs registrate in the inferior courts. Therefore the LORDS found certification ought to pass against these if not produced; but in regard of the importance and consequence of the danger, they gave the defenders a diligence to cite the clerks for recovery of these principals; and because they were dispersed through so many judicatories, they assigned the first of November for the first term, that they might have the vacancy to search them out. Some thought it might be for the advantage of the lieges to renew the custom used in the English time to return to the parties their own principal writs, it being presumable they will take more care of them than the clerk's servants, who, for a dollar or two, will give out sometimes principal papers, as happened in Captain Waddel's case*, and sundry others; and in Saline and Hart's case last winter*, a disposition registrate in 1644 being searched for, a testificate was reported from my Lord Register, bearing, *non est inventus*; by which the lieges are at a vast uncertainty; but this *vel eget*

No 10.

* Examine General List of Names.

No 10. *constitutione imperatoria*, or at least an act of sederunt to establish it. *See* IMPROBATION.

Fol. Dic. v. 1. *p.* 353. *Fountainhall, v.* 2. *p.* 336.

1743. *February* 5. MAXWEL and RIDDEL *against* MAXWEL.

No 11.
Decree of adjudication for two debts, while the bill of adjudication mentioned one only, sustained after 20 years.

IN a reduction and improbation at the instance of Robert Riddel of Glenriddel, against James Maxwel of Barncleugh, it being *objected* to an adjudication produced for Barncleugh, That the same was null as being led for two debts, though only one of these debts was contained in the bill of adjudication; it was *answered* for the defender, That it being now more than 20 years since the date of the adjudication, he was not bound to produce the warrants; and though such bill should be in the signet, there might have been another bill for the other debt; and after 20 years, the presumption in law was, that the summons was duly warranted by the bill.

Replied, That though warrants need not be produced after 20 years, yet if they do appear and are defective, the objection still lies; and as to the allegeance that there might have been another bill for the other debt, that was said to be impossible, for that it was inconsistent that one summons should have two warrants.

THE LORDS, before answer, 'Remitted to the Ordinary to inquire into the practice, how far a summons of adjudication, or any other passing upon bill, is in use always to have one bill for its warrant? or, if the same summons is in use to be taken out upon more bills than one, where there are different grounds of debt?' And the most experienced writers being called upon by the Ordinary, declared that they never knew or heard of one summons being raised upon two different bills, either in the case of adjudications, or any other summons passing the signet.

Upon the Ordinary's reporting whereof the LORDS in the reasoning among themselves took up the case upon the nature of the objection in general to an adjudication for the want of, or defect in the bill of adjudication; and it was on the one hand said, that it was doubted, if the want of the bill of adjudication, even within 20 years, should void the adjudication, as these bills never come into the hands of the adjudger, but lie at the signet; and should they be lost by the negligence of servants in the office, it would be the hardest thing imaginable for that to avoid the diligence; but still more so in this case, where the 20 years were elapsed, and no certainty that the bill supposed to be lying at the signet was at all the bill on which the adjudication had proceeded.

Answered, That where the question occurs within 20 years, however hard it may be on the party, yet it is our law, that the loss of warrants, even of those which never came into the hands of the party, affects the diligence. If again, after 20 years, the warrants appear, and are defective, the objection lies as