

scription, and in effect determined it, though they gave no interlocutor; because the defender was obliged to refer the verity of the subscription to the pursuer's oath, who was grandson to the granter, and which would have been unnecessary if the prescription was not run. This agreeably to 5th July 1681, Dickson against Macauley, (DICT. No. 298. p. 11090.)

No. 15.

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1737. December 23. KERR against CRICHTON, (or BRIGHTON.)

PRESCRIPTION NEGATIVE, of a right of property of lands without a positive prescription in another, whether it could run? The Lords waved to decide. *Vide inter eosdem voce* ADJUDICATION, No. 17.

No. 16.

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1738. February 9.

CAPTAIN RUTHERFORD against SIR JAMES CAMPBELL.

PRESCRIPTION of an account furnished to a Scotsman in London, whether regulated by the English statute of limitations, 21st James I. c. 16. of six years, or by the Scots law? The point had been determined by the Lords in presence, 12th February 1737, and found that the English statute was the rule, and was not now entire, but the Court was still of the same opinion. *Vide* the PRINTED PAPERS, particularly Memorials quoting sundry precedents judged the same way, viz. Rae and Wright, July 1717, Elliot against Duke of Hamilton in January 1721, and Fulks of Aikenhead, 12th February 1731. But then the defender having within the six years come to live in Scotland, the question was, whether the exception in the act 4to and 5to Annæ, for amendment of the laws, &c. of persons going beyond seas extends to the case of their coming to Scotland? and the Lords found, that *ex paritate rationis* it included this case, and therefore found the action still competent.

No. 17.

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1739. January 17.

EARL of GALLOWAY against The FEUARS of WHITEHORN.

THE act 1617 found to extend even to the annexed property, and the same found acquired by the positive prescription.

No. 18.