

No. 29. not adhere to our interlocutor, 14th January, but took the whole circumstances of the case under consideration, and found that no action lay on that obligation, 9th June 1747.—Adhered, 21st July.

No 30. 1749. *January 25.* MALTMEN OF GLASGOW *against* ROBERT TENNENT.

FOUND the Corporation of Maltmen of Glasgow sufficiently established by ratifications in Parliament in 1612 and 1672, and the positive prescription, notwithstanding the acts against them, act 29th 1567, and act 15th 1669.

No. 31. 1749. *January 24.* HARROWAR *against* WELLS.

A VERBAL bargain setting hay in steelbow for 19 years, when a written tack of the land was granted for that space *anno* 1723, but that part of the bargain not inserted in the tack, nor reduced into writing, was notwithstanding thereof, and of the 9th act 1669, found proveable by witnesses, and Kilkerran's interlocutor altered, *renitente* President, as I was told, for I was in the Outer-House.

No. 32. 1749. *June 28.* WEMYSS *against* ALEXANDER CLERK.

A MESSENGER in 1721 gave receipts to a merchant for some bills, on which diligence had followed, without saying for what end, but probably to recover payment; and in 1744 he sued him upon these receipts to return the bills or pay the contents, and Kilkerran decerned. But on a reclaiming bill we refused to sustain action upon such receipts, at so great a distance of time, though there was no prescription, because the defender did not disown his subscription, but averred in general that he had either returned the writings or paid the money, if he received any payment from the debtors.

No. 33. 1749. *November 10.*
HENRY ELLIOT in Flatt, *against* WILLIAM ELLIOT of Kirklands.

IN a reduction of a disposition dated 1692, on the act 1621, the question occurred, Whether by the act 1617, the positive prescription can run against

minors, or if the exception of minority in that act be only meant from the negative prescription of actions. There were different singular successors in different lands, whose rights depended on that disposition 1692, some of whom had possessed more than 40 years by charters and sasines, others again, though they had possessed as long, yet had not so early completed their titles as to plead the positive prescription. The creditor's debt had also been divided between two successors, either executors or assignees, one of whom was so long under age, that deducting his minority, the 40 years were not run, but the other could not plead minority. Both defenders pleaded the negative prescription, and Lord Justice-Clerk sustained the defence against the person who could not plead minority; but as to the other, he sustained the reply of minority. One of the defenders, William Elliot of Kirklands, pleaded also the positive prescription, and the pursuer replying minority, he sustained the defence and repelled the reply. The pursuer reclaimed, and on answers, the Bench being divided, the cause was heard fully in presence, (*vide* my Notes on the petition, and the Lord Advocate noticed most of the arguments there.) But the Court observing that the purport of the process was to oblige a third or fourth purchaser, at the distance of 57 years, to prove or astruct the onerous cause of the disposition to their remote ancestor in 1692, they directed the Counsel to argue that point; and on the hearing, unanimously found the defender not bound to astruct the onerous cause of that disposition. (See NOTES.) (See DICT. No. 465. p. 11315.)

No. 33.

1751. *July 27.*

MR FULLERTON'S CASE.

A WRITER, who in 1727 borrowed up from the clerks his client's papers on receipts, being sued for them only in 1749, no further bound, than to depone as in an exhibition.

No. 34.

1753. *August 10.* M'INTOSH of Aberander *against* JOHN BAILLIE.

PRESCRIPTION of land-rents runs, notwithstanding the master was debtor to the tenant during the five years in another debt, wherein these debts might

No. 35.