

1776. *December 21.* POOR ANDERSON *against* WILSONS.

A LIKE demand was made, and also to find caution *judicatum solvi*, in a process of oppression and damages, Poor Anderson *against* Messrs Wilsons, ministers at Gamery, before Lord Hailes; which demand his Lordship refused, and pronounced an act for proving, and Messrs Wilsons did not, upon that point, reclaim.

1745. *June 28.*

JEAN SYMONS.

A PURSUER was allowed the benefit of the Poor's Roll in a cause where her libel was admitted to proof, although the defenders were Magistrates of a royal burgh, and that the pursuer, as was alleged, lay under a bad character.

PRESCRIPTION.

1777. *February 27.* The TRUSTEES of BOYDS *against* The EARL of HOME.

DILIGENCE upon a bond saves prescription of a relative bond of corroboration, the Trustees of Boyds *against* Earl of Home, 18th June 1776. On a reclaiming petition the Lords demurred, and superseded further consideration of the point till November; and, upon advising the petition and answers, they altered and found the bond of corroboration prescribed, though the bond corroborated was not. This day, 27th February 1777, refused a reclaiming petition without answers, and adhered.

The bond of corroboration in this case not only corroborated the principal, but turned some annualrents owing, into a principal. The Lords were of opinion that, to save a bond of corroboration from prescription, a document behaved to be taken on it within the forty years.

1776. *August* . JOHN GORDON *against* ROBERT OGILVIE.

WHERE a minister and his predecessors have possessed lands as part of his benefice for the term of the *decennalis et triennalis possessio*, it is sufficient to secure him, till called in question by a process of reduction, if there is a right by any deed to the lands under challenge,—or by process of declarator, if there is no deed but possession only. This distinction between a reduction and de-

clarator so argued, August 1776, Captain John Gordon of Park against Mr Robert Ogilvie, minister of Ordiequhill.

1768. July 13. JOHN RANDELL *against* EXECUTORS of INNES.

CAPTAIN INNES, an officer in the Artillery, resided at Woolwich in England, for some years preceding 1759, when he came to Scotland, and resided there till 1765, when he died. John Randell, an English tailor, brought an action against Captain Innes's executors, for an account of tailor's work current to the 1760. The executors pleaded the Scots triennial prescription, and the debate turned upon the abstract point, Whether the Scots prescription applied to a debt contracted in England? "The Lords ordered additional memorials upon it, and, 13th July 1768, sustained the defence of the triennial prescription, assoilyed the defenders, and decerned."

In a later case,

MRS JEAN KERR *against* The EARL of HOME,

for a debt of the late Earl's, the contraction of which was partly proved by letters; the Lords sustained the same defence.

And in a still more recent cause, determined

1772. BRYANT BANET of LONDON, Laceman, *against* The EARL of HOME,

for an account due by the late Earl; Lord Kennet, Ordinary, sustained the defence of prescription pleaded against the account libelled, and assoilyed the defender; and the Lords, upon petition and answers, adhered.

Where a summons concludes against different debtors, on different *media*, for different debts, insisting against one will not preserve the summons from sleeping as to the rest. It is the same as to prescription: insisting against one defender, on a separate conclusion, will not stop prescription as to the rest. The mere execution of a summons stops only for seven years, but a process stops for 40 years: What then does a summons, executed and called judicially, do? Whether is this a process which stops prescription for 40 years? It would seem to be so; see *22d July 1758, Ross against Wallace*; yet see *23d November 1694, Rattray*, observed by Fountainhall, where the point was debated, but not decided.