

the accompt produced, to be the accompt to which the missive letter relates, unless the suspenders will offer to prove by the Earl's oath, or the writ, that there was an other accompt given in.

No 259.

*Sir P. Home, MS. v. 1. No 391.*

1730. June —.

EWART *against* MURRAY.

No 260.

IN an action for the price of a parcel of sheep, sold and delivered to the defender's predecessor, about forty years preceding the date of the action; the question occurred, whether this action was subject to the triennial prescription of merchants accompts, or to the quinquennial prescription of bargains concerning moveables. It was found to fall under the quinquennial, and not the triennial prescription. (See APPENDIX.)

*Fol. Dic, v. 2. p. 118.*

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DIVISION IX.

Triennial Prescription.

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SECT. I.

Of Spuilzies and Ejections.

1587. January —.

CONSTABLE of DUNDEE *against* The LAIRD of STRATHMARTIN.

THE Constable of Dundee pursued the Laird of Strathmartin, for the wrongous intromission and away taking of the teinds of certain lands, and that pertaining to him by virtue of his inhibition and tack. *Answered*, That the action being of the nature of spuilzie, was prescribed by reason of the act of Parliament, that all actions of spuilzie prescribed, except they be pursued within the space of three years after the committing of the same. *Answered*, That this was not action of spuilzie, but of wrongous intromission, and the act of spuilzie differed from the same *in tantum quod in actione spoliij juratur in litem*, and so

No 261.

Found that the act Parliament about prescription of spuilzies and ejection, (1579, c. 81.) concerns only the privileges of the action, viz. the *juramentum in litem*, &c.