

No. 11. 1737, Jan 14. FERGUSON of Auchinblain *against* MUIR.

THE Lords found the prescription competent for all preceding three years, unless the pursuer will prove resting owing by oath.

No. 12. 1737, June 17. SIR ROBERT DOUGLAS *against* SIR J. SCOTT.

THE Lords sustained the interruption of the prescription of the L.100 bond by the holograph receipt of annualrents, and found that receipt although holograph probative against Sir Robert Douglas the principal debtor as well as against the creditor who granted it and the cautioner who produced it. I doubted much of this interlocutor, for the thing appeared very suspicious; but there was no division on the Bench, and I being in the chair did not put it to the vote. 2dly, They sustained the defence against the 2500 merks bond assigned to Sir Patrick Scott in 1679, that Sir John could not sue upon it *ante redditas rationes*, notwithstanding of the prescription of the tutor-accounts. We did not think that the decision in the case of Mauldsley,* that compensation cannot be pleaded upon a prescribed debt, had any connection with this case, which is not compensation but payment, since the law presumes that the debt was paid *re pupilli*. Lord Arniston was also of this opinion, but he further differed from that decision, though it were a proper compensation, and said he would always doubt of it, till it were confirmed by a series of decisions.

No. 13. 1737, Jan. 19. MURRAY *against* COWAN.

See Note of No. 9, *voce PACTUM ILLICITUM*.

No. 14. 1737, July 14, Dec. 6. SIR JAMES DALRYMPLE *against* DUNCAN.

THE Lords adhered to their interlocutor in so far as it found Mr Edmonston's minority ought to be deducted. But found no occasion to determine the other as to Carnwath, and the reason of adding this, was a doubt Arniston had as to Carnwath's, who was not within year and day of the other adjudgers; though if that question had been put, the majority seemed of opinion of the interlocutor.

No. 15. 1737, Dec. 16. WALKINGSHAW *against* KNAPPERNY.

THE Lords were of very different opinions. Most part of us were for sustaining the answer of prescription, but upon different grounds. Some of us thought, first, that the compensation was not liquid within the years of prescription, and therefore it could not stop the prescription; and 2dly, that though it had been liquid, it would not have hindered the running of the prescription; and I was one of those that was of that opinion upon both grounds. *Vide* 18th January 1712, Herries *against* Maxwell, (Dict. No. 139. p. 2677.) Arniston was of the same opinion upon the last ground, but thought as to the first that the account produced by Walkinshaw proved it liquid within the years of prescription. But the President seemed to be *against* the prescription on both grounds, and Tweddale

* Dict. No. 139. p. 2677.