

1739. *November 30.*

M'DOWALL of Arncaple *against* M'DOWALL of Gallanach.

No. 19.

A SUMMONS executed, though not called within year and day, is a sufficient interruption; but the executing a blank summons is no interruption. (See DICT. No. 441. p. 11273.)

1739. *July 10, Nov. 27, December 5.*

THOMAS M'DOWALL *against* BARBARA M'DOWALL, and GEORGE HAY,
HER HUSBAND.

No. 20.

THE estate of M'Kerston standing settled by the investitures to heirs-male without limitations, Henry M'Dowall in 1684, by virtue of a reserved power and faculty in his son Thomas's infeftment in the estate, made a strict entail with limitations and irritancies in favours of heirs-male; but thereon nothing followed, nor was it ever made public till the year 1738. Henry possessed by virtue of his reserved liferent till his death in 1692, when his son Thomas possessed in right of his infeftment of the estate that he got before that entail, and died in 1701, leaving three infant sons, Henry, Thomas, and William; and Henry made up his titles by serving heir of the investiture; and having only one daughter, granted a procuratory of resignation to himself and the heirs-male of his body, which failing in favours of the said daughter; and upon his death in 1722 the daughter served heir to the procuratory, obtained a charter of resignation, and was infeft; and in 1733, by contract of marriage with George Hay, settled the estate to him in liferent, and the heirs-male of the marriage in fee. And Thomas M'Dowall, the second son of Thomas, and brother of the last Henry, having made up a title to the entail 1684, pursued reduction of the Lady's and her husband's infeftment. And the Lords found, that the bond of tailzie 1684 having lain latent, and no document taken upon it for upwards of 40 years from the date thereof, and the estate having been possessed by Thomas and Henry M'Dowall, and Barbara M'Dowall, present possessor thereof for upwards of 40 years, in virtue of a disposition and infeftment in 1668, they have the benefit both of a positive and negative prescription, and that the tailzie 1684 cannot now be set up as a title of eviction of the estate from the said Barbara M'Dowall, notwithstanding that Henry and Thomas, her father and grandfather, were heirs by the tailzie 1684 as well as by the disposition and infeftment 1668; and found that the minority of Thomas