

1769. *January 25.* PETER LESLIE GRANT of Balquhaine, *against* JAMES GORDON of Cobairdy.

PRESCRIPTION—TAILYIE.

Import of a Clause in a Tailyie—Prescription of an Entail.

[*Faculty Collection, IV. p. 158 ; Dictionary, 15,422.*]

MONBODDO. The father, by his reserved powers, might have insisted against the son to resign the lands and take them in terms of the entail; but he did not do this. The marriage-contract, 1706, rendered the lands unentailed. The interlocutor might have stood upon that ground: it may also stand upon the ground of prescription. My father makes an entail,—I make up my titles upon the former investitures, and possess for forty years,—there is an end of the entail.

PITFOUR. I do not think that here there ever was an entail: if there was, it is now prescribed. A substitution to heirs of entail, without more, signifies nothing, and binds nobody. Whatever the intentions of Patrick may have been, it matters not, for intentions will not fetter property.

On the 25th January, 1769, the Lords assoilyied, sustaining the defences in general.

*Act. D. Græme. Alt. R. M'Queen. Reporter, Auchinleck.*

1769. *January 25.* ROBERT STEPHEN, and OTHERS, *against* JOHN CRAICK and JAMES MITCHELL.

POINDING.

A Messenger who, without letters of Open Doors, had removed Trees which served as a barricade to the door of a Wood-yard, and so made entry and Poinded, was assoilyied from reduction of the Poinding.

[*Faculty Collection, IV. p. 152 ; Dictionary, 10,539.*]

GARDENSTON. The action is groundless: It is plain that the proprietor must have been in use to open his door from the inside, and it could be opened from the outside, by putting away three trees set against it.